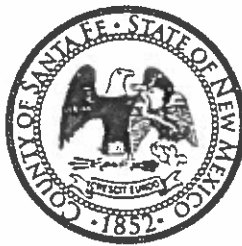


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: August 5, 2014

TO: Board of County Commissioners

VIA: Katherine Miller, County Manager *km*

FROM: Adam Leigland, Public Works Director

ITEM AND ISSUE: BCC Meeting August 26, 2014
REQUEST FOR APPROVAL OF A LEASE WITH THE JACONA LAND GRANT

SUMMARY:

This item is to approve a lease agreement with the Jacona Land Grant for 20 acres on which to construct a new, modern solid waste transfer station, opens space site, and fire station.

BACKGROUND:

On April 10, 2012, the BCC approved Resolution 2012-52, creating the Solid Waste Task Force (SWTF) to examine ways to improve the County's solid waste operation. The SWTF produced a set of recommendations that were presented to the BCC for approval on February 12, 2013. One of the approved recommendations was to site and construct a new, modern, efficient solid waste transfer in the northern part of the County.

DISCUSSION:

In March 2013, in this process, staff came upon a signed November 1998 MOU between the County and the Jacona Land Grant to site a transfer station on the Land Grant. Obviously, this 1998 agreement was never effectuated, but it did lead staff back to the Land Grant to reopen discussions. Discussions began in earnest with the Land Grant board in April 2013 and continued to February 2014.

In the course of negotiations, it emerged that the proposed site would also be well suited for a volunteer fire station and for the community recreational needs identified in the recent Northern Santa Fe County Recreational Needs Analysis. These uses were included in the draft lease.

On February 23, 2014, staff presented the draft lease to the full membership of the Jacona Land Grant, who voted 94% for, 6% against, to support the lease.

The major terms of the lease are listed below:

1. For 20 acres;
2. For 25 years, with a 25-year renewal option;
3. Accommodates a transfer station, open space site, and fire station;
4. Rental amount is \$40,000/year with an annual escalator based on CPI.

Staff feels this lease benefits the County in multiple ways. Once constructed, the new transfer station will result in operational savings of between \$50,000 and \$60,000 per year. The Fire Department has long searched for a site in the El Rancho area for a new volunteer station. Finally, the community recreational needs identified in the recent Northern Santa Fe County Recreational Needs Analysis can well be met on the subject leased area.

ACTION REQUESTED:

Approve subject lease

Attachments:

1. Draft lease agreement
2. Legal description
3. Survey
4. Proposed site plan

**LEASE AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE JACONA LAND GRANT ASSOCIATION**

This **LEASE AGREEMENT** (hereinafter "Lease") is made and entered into this first day of September, 2014, by and between the Jacona Land Grant Association (hereinafter "Lessor"), and Santa Fe County, a political subdivision of the State of New Mexico, (hereinafter "Lessee"), for the purpose of leasing real property for the purpose of constructing, operating, and maintaining a solid waste transfer station, open space recreational site, and fire station for use by the public. Lessor, for and in consideration of the Lease payment and the payment of taxes as provided herein to be paid by the Lessee, during the Term (as defined below), leases that certain premises located in the County of Santa Fe, State of New Mexico, described on Exhibit "A" attached hereto and by reference incorporated herein, consisting of nineteen (19) acres \pm of real property, located at 1540 New Mexico 502, Santa Fe County, New Mexico (hereinafter the "Property").

1. Definitions as used in this Lease:

"Solid Waste Transfer Station" means a New Mexico Environment Department-registered or -permitted solid waste facility that collects and consolidates solid waste or recyclable materials in large containers or vehicles for transfer to another Solid Waste Transfer Station or facility and includes a "convenience center" that accepts solid waste from residential solid waste or commercial waste generators.

"Open Space Recreational Site" means hard or soft surface trails, bike paths, horse trails, picnic shelters, parking lots, trail heads, playgrounds and other appurtenant structures for public recreational outdoor use located within the boundary of the Property.

"Fire Station" means a facility and appurtenant structures and access ways used for the housing of fire apparatus and fire personnel.

"Hazardous Substance" means any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Property, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Property, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof.

"Reportable Use" means (i) the installation or use of any above or below ground storage tank, and/or (ii) the generation, possession, storage, use, transportation, or disposal of Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority.

"Consumer Price Index for All Urban Consumers" or "CPI-U" means the Consumer Price Index for All Urban Consumers, not seasonally adjusted, and published by the US Department of Labor.

2. **Term:** The term of this Lease (hereinafter "Term") shall be for a period of twenty-five (25) years, beginning on the _____ day of _____, 2014, and ending on the _____ day of _____, 2039. Lessee and Lessor may mutually agree to extend the Term upon the expiration of the initial Term for another twenty-five (25) years, or such other shorter duration of Term as they may agree.

3. **Condition of the Property upon Commencement of the Term:** Lessee accepts the Property "as is" in its present state and condition without any representation or warranty by Lessor as to the condition of the Property, including excavations, impediments or the suitability of the Property for Lessee's planned use as a Solid Waste Transfer Station and future Open Space Recreational Site. Lessor makes no representations or warranties pertaining to the former dump site located on the Property.

4. **Use of the Property:** Lessee shall use the Property to immediately construct and operate a Solid Waste Transfer Station and at a later time design and construct an Open Space Recreational Site and a Fire Station. Any planned use of the Property not otherwise authorized by this Lease, shall be approved by Lessor in writing at least six (6) months prior to commencement of the design and construction of such additional or other use(s).

A. At the commencement of the design of the Solid Waste Transfer Station and prior to any construction activities, Lessee shall inform Lessor of Lessee's design and construction plans for the Transfer Station. Lessee shall obtain Lessor's concurrence of the Lessee's design and location of the Solid Waste Transfer Station prior to Lessee's commencement of any construction of the Solid Waste Transfer Station.

B. Requirements and conditions for use and management of the Property.

(1) Roads. If Lessee builds any roads on the Property such roads shall be paved and maintained by the Lessee in good, usable condition throughout the Lease Term. Lessor shall be permitted to use such roads freely throughout the Lease Term.

(2) Solid Waste Transfer Station. Lessee shall operate and maintain the Solid Waste Transfer Station in good condition, prevent overfills of trash and debris onto adjacent property, maintain weed and brush control, prevent fire hazards and maintain and adhere to the standards for the operation and maintenance of a Transfer Station of the State of New Mexico Environment Department and any other regulating entity. Lessee shall fence and maintain such fence around the Solid Waste Transfer Station to contain debris. Lessee shall maintain friendly relations with residents and owners of adjacent property and shall timely address any issues regarding Lessee's use of the Property or the operation of the Solid Waste Transfer Station that are brought to Lessee's attention by the Lessor or owners or residents of adjacent properties.

(3) Open Space Recreational Site. When Lessee is prepared to allocate resources to the design and construction of the Open Space Recreational Site Lessee shall inform Lessor of Lessee's design and construction plans for the Open Space Recreational Site. Lessee shall obtain Lessor's concurrence of the Lessee's design and location of the Open Space Recreational Site prior to Lessee's commencement of any construction of the Open Space Recreational Site.

(4) Fire Station. When Lessee is prepared to allocate resources to the design and construction of the Fire Station Lessee shall inform Lessor of Lessee's design and construction plans for the Fire Station. Lessee shall obtain Lessor's concurrence of the Lessee's design and location of the Fire Station prior to Lessee's commencement of any construction of the Fire Station.

5. **Fixtures and Improvements:** Lessee may, at Lessee's sole cost and expense, make such changes and alterations or improvement as may be necessary to use the Property to construct, operate and maintain a Solid Waste Transfer Station, Open Space Recreational Site, Fire Station, and any other uses approved in this Lease by the Lessor. Any and all other uses of the Property unrelated to the construction, operation and maintenance of a Solid Waste Transfer Station, Open Space Recreational Site, and Fire Station shall be approved by Lessor in writing at least six (6) months prior to commencement of such additional or other uses. Lessor shall not unreasonably withhold approval and shall be readily available to receive information required to approve such additional uses.

A. Unless the Lessor and Lessee agree otherwise with respect to specific fixtures such as road(s), electricity, gas and water utilities, all fixtures and improvements installed by Lessee shall remain the property of the Lessee, who shall remove the same within one (1) year of the date of termination of this Lease.

6. **Condition of the Property by Lessee upon termination or expiration of Lease Term:** Unless otherwise agreed to by the Lessor and Lessee with regard to specific fixtures or improvements, upon termination or expiration of the Term of this Lease Lessee shall return the Property to the condition the Property was in upon Lessee's initial lease of the Property and prior to Lessee's construction of improvements, structures and fixtures, ordinary wear and tear excepted. Lessee shall return the Property to such condition within one (1) year of the date of termination. Upon termination, Lessee shall conclude its operations and quit and surrender possession of the Property as soon as practicable. Lessee's surrender of the Property upon termination or expiration of the Term shall be in compliance with any applicable environmental requirements of the State of New Mexico Environment Department and any other regulatory entity.

7. **Condition of former dump site on the Property:** Lessee acknowledges that it is leasing the Property "as is" and that the Property contains a former dump site. Lessee agrees that within a period of three (3) to five (5) years from the effective date of this Lease, Lessee shall allocate resources and commence action toward the improvement of the former dump site and

shall complete such improvement within three (3) years from the time Lessee commences the actions toward the improvement.

8. **Utilities:** Lessee shall be responsible for payment of all utilities and other charges of whatsoever kind and nature, including but limited to, charges for electrical, gas, garbage, water, sewage, telephone, and other services, which may be incurred in connection with the Lessee's operation and maintenance of the Solid Waste Transfer Station and the public's use of the Transfer Station and future Open Space Recreational Site and Fire Station or any other Lessor-approved use of the Property. Lessee shall permit Lessor to use any utilities installed by Lessee as part of Lessee's use of the Property as long as Lessor establishes a separate account and pays for Lessor's use of utilities. Lessor may install its own utilities on or through the Property as long as such installation and use do not interfere with Lessee's quiet enjoyment and use of the Property.

9. **Access:** Lessor shall have access to the Property at all reasonable times, whether for inspection, its own use, or any other reason thereof as long as such access does not interfere with Lessee's use and quiet enjoyment of the Property. Lessee shall have clear signage for the public entrances to the Solid Waste Transfer Station and use of the Open Space Recreational Site and Fire Station. If Lessor must enter the Property at such time that the public entrances are closed or locked, Lessee shall permit Lessor to enter the Property through the entrance used by Lessee if one exists.

10. **Repair and Maintenance:** Lessor shall not be required to make any improvements or repairs whatsoever in or upon the Property during the Lease Term. Lessee shall keep and maintain said Property clean, safe, and in good order and condition at all times during the Term. Lessee shall be responsible for promptly attending to all required repairs, maintenance and necessary improvements to the Property during the Lease Term.

11. **Hazardous Substances:** Lessee shall not engage in any activity in or on the Property which constitutes a Reportable Use of Hazardous Substances without the prior written consent of the Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, and/or (ii) the generation, possession, storage, use, transportation, or disposal of Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority. Notwithstanding the foregoing Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the agreed use, so long as such use is not a Reportable Use, and does not expose the Property or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefore. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Property and/or the environment against damage, contamination, injury and/or liability, including but not limited to the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or imposing a security deposit or other protective modifications.

A. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Property, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

B. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Property (including through any plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/ or monitoring of the Property or neighboring properties that was caused or materially contributed to by Lessee or pertaining to or involving any Hazardous Substance brought onto the Property during the term of this Lease by or for Lessee, or any third party. Lessee's insurance coverage shall include coverage for losses due to Hazardous Substances.

C. Lessor and Lessee shall at all time and in all respects comply with federal, state and local laws, ordinances and regulations with respect to Hazardous Substances. Lessee shall provide Lessor with copies of any and all environmental reports, assessments or sanctions levied by the State of New Mexico Environment Department regarding to any Hazardous Substances issues or remediation completed during the Lease Term.

D. Notwithstanding Lessee's obligations stated above with respect to Hazardous Substances, Lessee shall not take any remedial action or enter into any settlement agreement, consent decree or other compromise with respect to any claims regarding Hazardous Substances in any way relating to the Property without written notice to the Lessor, and affording Lessor ample opportunity to concur, object or make a different recommendation with respect to Lessee's intended course of action.

12. **Base Lease Payment:** Lessee covenants and agrees to pay Lessor an annual lease payment (the Base Lease payment) for the Lessee's lease of the Property in the amount of Forty Thousand Dollars (\$40,000.00), exclusive of tax. The annual Lease payment shall be made in biannual installments. One half (\$20,000.00), shall be paid on the effective date of this Lease on _____, 2014. The second half (\$20,000.00), of the yearly Lease payment shall be paid six (6) months after the due date of the first yearly payment on _____, 20___. Subsequent Lease payments shall be paid in six (6) month increments thereafter. Lessee shall remit the Lease payment to the Jacona Land Grant Association.

A. Base Lease payment escalator. The Base Lease payment shall be subject to an annual increase of 2.8% per year.

B. Property Taxes: Lessee agrees to pay to Lessor along with the Lease payments due, that portion of property tax assessed on the Property after and as a result of Lessee's completion of any roads, the Solid Waste Transfer Station and any other Lessor-approved improvements including the Open Space Recreational Site and Fire Station. For each year of the Term of this

Lease, Lessee shall pay such portion of property tax directly to Lessor who shall continue to pay the total property tax due on the Property as assessed annually by the County Assessor. Lessee shall pay its portion of the property tax to Lessor at the first scheduled biannual payment after the Lessor's receipt of the Notice of Valuation for the Property from the County Assessor. The Lessee shall also pay its portion of the annual property tax to the Lessor for the last year of the lease Term in one lump sum within two (2) months of the Lessor's receipt of the Notice of Valuation from the County Assessor; the parties understand and agree that Lessee's payment of its portion of the annual property tax shall be due and paid after the termination of the lease Term.

13. **Permits:** Lessee shall be responsible for the acquisition of any required permits or any other approvals from outside agencies, such as the New Mexico Environment Department or New Mexico Department of Transportation, in the execution of the terms of this Lease.

14. **Taxes:** In accordance with Section 12 (Base Lease Payment), Lessee shall pay any and all applicable taxes on the property after and as a result of Lessee's completion of any roads, the Solid Waste Transfer Station and any other Lessor-approved improvements including the Open Space Recreational Site and Fire Station, including without limitation the Lessee's portion of the property tax as provided in Section 12.D above, as levied by the County Assessor. Lessee shall also pay any tax assessed upon any personal property or fixtures and/or improvements completed by the Lessee on the Property during the Term of this Agreement.

15. **Subleasing:** Lessee shall not sublease to a third party or otherwise permit third-party occupancy or use of the Property or any portion thereof. Any sublease of this Lease by Lessee shall be void and shall be of no force or effect and shall confer no rights upon any sublessee.

16. **Assignment:** Lessee may assign this Lease only with the prior written approval Lessor. Lessee shall submit a written request to the Lessor at least ninety (90) days prior to the proposed assignment.

17. **Liability and Insurance:** Lessee shall throughout the Term of this Lease provide insurance coverage on the Property as required by the laws of the State of New Mexico and to provide coverage for the activities for which immunity is waived pursuant to §§ 41-4-8A and 41-4-6A, NMSA 1978, of the New Mexico Tort Claims Act. No provision of this Lease modifies or waives any sovereign immunity or limitation of liability enjoyed by the Lessee or its "public employees" under common law or under the New Mexico Tort Claims Act, NMSA 1978, 41-4-1, et seq, as amended.

Lessee shall name Lessor as an additional insured in its insurance policy and shall provide a Lessee's certificate of insurance to Lessor.

18. **Non-Discrimination:** Lessee, with respect to employment of staff and to those persons using the Property, shall not discriminate unlawfully with respect to race, sex, national origin, age religion, sexual orientation or any other class protected against discrimination by applicable local, state or federal laws.

19. **Default:** In the event that Lessee shall be in default of any payment of the Base Lease payment or in the performance of any of the terms or conditions agreed to be kept and performed by the Lessee pursuant to this Lease, Lessor may terminate and end this Lease as provided in Section 23.

20. **Notices:** Any notices which are required hereunder, or which either Lessor or Lessee may desire to serve upon the other, shall be in writing and shall be deemed served when delivered personally, or three days after deposited in the United States mail, postage prepaid, addressed to:

Lessee: Santa Fe County Manager
Santa Fe County
Post Office Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

Lessor: Jacona Land Grant Association President
P. O. Box 3769
11 West Gutierrez
Santa Fe, New Mexico 87506

Lessor and Lessee shall be responsible for informing the other of any change in address in order to ensure the ability to exchange notices.

21. **Compliance with Laws and Governing Law:** Lessee and Lessor agree to comply with all laws, ordinances, rules and regulations which may pertain to the Property and the use thereof. This Lease shall be governed by the laws of the State of New Mexico.

22. **Successors in Interest:** All of the terms, covenants and conditions contained in this Lease shall continue, and bind all successors in interest of both Lessor and Lessee herein, subject to Lessor's approval of any assignment of this Lease by Lessee pursuant to Section 16.

23. **Termination of Lease:**

A. **Termination for Cause.** Either Lessee or Lessor may terminate this Lease Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure. The parties shall mutually agree on a reasonable time to cure the breach.

B. Termination for Convenience of the Lessee. The Lessee may, in its discretion, terminate this Lease at any time for any reason by giving the Lessor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than one (1) year from the Lessor's receipt of the notice. The Lessee shall not be liable for any Lease payment after the date of termination but shall be responsible for payment of its portion of taxes as provided in Sections 12.B and 14 of this Agreement, for the last year of the Term of this Agreement which shall be paid to the Lessor within two (2) months of the Lessor's receipt of the annual tax assessment from the County Assessor.

24. **Amendments:** This Lease shall not be amended, changed or altered except by an instrument in writing signed by the Lessor and Lessee.

25. **Entire Lease:** The foregoing constitutes the entire agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein.

IN WITNESS THEREOF, the parties hereto have executed this Lease Agreement and have set their hand and seals.

LESSOR – JACONA LAND GRANT ASSOCIATION

_____ Date: _____
(name and title)


Attest:

Date: _____

LESSEE – SANTA FE COUNTY

Daniel W. Mayfield, Chair
Santa Fe County Board of County
Commissioners

Approved as to form:


Gregory S. Shaffer
Santa Fe County Attorney

Date: 8/18/14

Approved:

Finance Department


Teresa C. Martinez
Director

Date: 8/20/14

Katherine Miller
County Manager

Date: _____

NEW MEXICO STATE BOARD OF FINANCE

(signature and title)

Date: _____

Brian K. McClintock, N.M.P.S. #11597
New Mexico Professional Surveyor
c/o - BLUELINE CONSTRUCTION, INC.
P.O. Box 28666, Santa Fe, New Mexico 87592-8666
505.216.7909/office
bkm@bluelinenm.com

LEASE PARCEL – “The Cooperative Association of the Jacona Gant” and “County of Santa Fe”

A Parcel of land for Lease, lying within the Jacona Grant, projected Section 15, T.19 N., R.8 E., N.M.P.M., Santa Fe County, New Mexico and being more particularly described as follows:

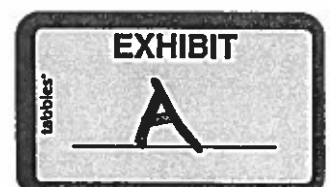
Beginning at a point on the Northwest corner (POB) of the herein described lease parcel, being a No.4 rebar set (NMPS #11597), also being a point located on the westerly Jacona Grant line common to the easterly San Ildefonso Pueblo Grant line from which point a NMDOT right of way brass monument for NM State Road 502, stamped “STA.134+27.75, L.S.#5221”, bears N.00deg.09’46”W. a distance of 101.97 feet; thence continuing along said common grant line, N.00deg.09’54”W. a distance of 1148.38 feet to a U.S.G.L.O brass monument, stamped “U.S.G.L.O., T.19N., R.8E., CC S10/S15, 1914”;

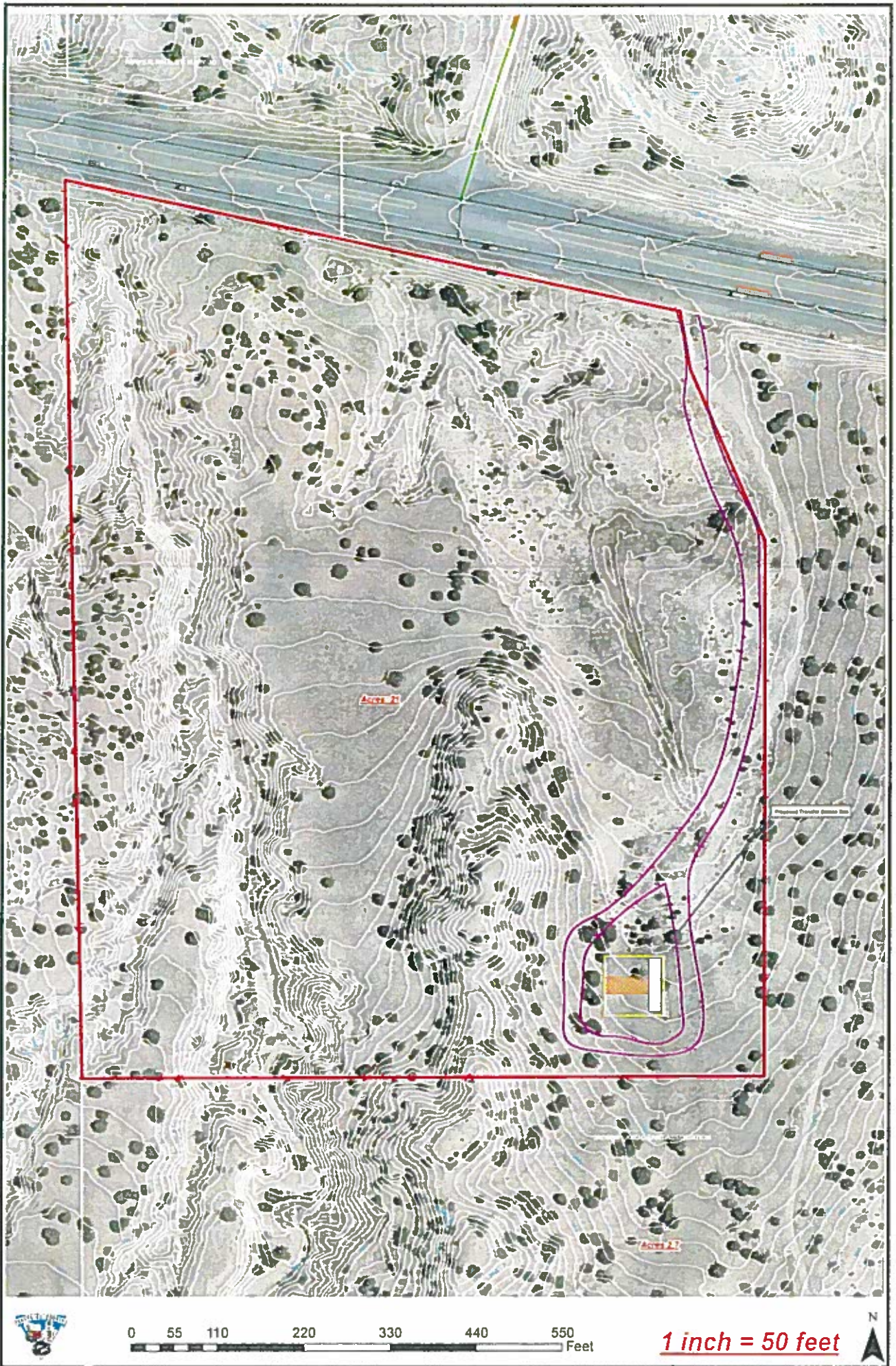
Thence from said Northwest corner, point of beginning (POB), S.78deg.53’35”E., a distance of 837.87 feet to the Northeast lease parcel corner, being a No. 4 rebar set (NMPS #11597), from which corner a NMDOT right of way brass monument for NM State Road 502, stamped “STA.245+37.30, LS #5221”, bears N.79deg.20’48”E., a distance of 269.74 feet, also from said Northeast lease parcel corner a GPS plastic control monument, stamped “Metes and Bounds”, bears N.25deg.16’32”E., a distance of 291.74 feet; Thence from said Northeast lease corner S.27deg.38’24”E. a distance of 192.93 feet to an angle point on the said lease parcel, also being a No. 4 rebar set (NMPS #11597); Thence S.00deg.56’39”W. a distance of 675.36 feet to the Southeast lease parcel corner, being a No.4 rebar set (NMPS #11597), from which corner a Santa Fe County Control monument, SF-17, bears N.82deg.53’44”E., a distance of 4824.71 feet, also from said Southeast lease parcel corner a U.S.G.L.O. brass monument, stamped “U.S.G.L.O., T.19N., R.8E., JG, S14/S23, 1929” bears S.32deg.38’20”E., a distance of 4050.48 feet; Thence from said Southeast lease corner S.85deg.42’27”W. a distance of 900.02 feet to the southwest lease parcel corner, being a U.S.G.L.O. brass monument, stamped “U.S.G.L.O., T.19N, R.8E., SIPG, 1M/S15, 1914”, also being a point on the grant line common to the Jacona Grant and the San Ildefonso Pueblo Grant, from which point another U.S.G.L.O. brass monument stamped “U.S.G.L.O., T.19N., R.8E., SIPG, ½ M, S15, 1914”, bears S.00deg.10’33”E. a distance of 2632.26 feet; Thence from said Southwest lease corner N.00deg.09’46”W., along said common grant line, a distance of 1074.96 feet to the Northwest lease parcel corner, being the said point and place of beginning.

Said lease parcel described above contains: 855,186.84 sq.ft. (19.6324 acres) more or less.

Brian K. McClintock

NMPS # 11597

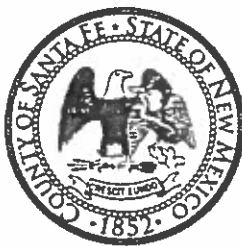




Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5


Katherine Miller
County Manager

MEMORANDUM

DATE: *July 22, 2014*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director*

VIA: *Katherine Miller, County Manager* 

ITEM AND ISSUE: *BCC Meeting August 12, 2014.*

APPROVAL OF SOLID WASTE TASK FORCE RECOMMENDATIONS FOR NEW PERMITS AND EXPANDED MANDATORY RECYCLING

SUMMARY:

Approval of these recommendations will expand mandatory recycling and authorize staff to develop a new solid waste permit structure.

BACKGROUND:

On April 10, 2012, the Board of County Commissioners (BCC) adopted Resolution 2012-52 establishing a Solid Waste Task Force to address the following questions:

1. Is the permit and fee structure for the program adequate to meet its funding needs?
2. What opportunities exist for the program to be self-sufficient and less susceptible to unexpected cost increases?
3. Review and evaluate the existing solid waste program and make recommendations on how to improve services.

The Task Force met monthly between July 2012 and January 2013, and provided its initial findings and recommendations to the BCC at the Board's February 12, 2013, meeting. One of the recommendations adopted by the Board was to "proceed and fund the County-wide solid waste study." At that time, the City of Santa Fe and the Santa Fe Solid Waste Management Agency were already in the process of pursuing a solid waste study to meet their respective needs. Santa Fe County's solid waste study requirements were subsequently included in the City and Solid Waste Agency's larger initiative. In the spring of 2013, the firm Leidos Engineering was retained to perform the solid waste study for the three entities.

During the remainder of 2013, Leidos' consultants and County Public Works Department staff conducted the study and provided periodic updates on the progress of the study to the Board,

including a formal presentation at the BCC's meeting on August 28, 2013, on the topic of contracting with the private sector to provide collection services.

Another recommendation approved at the February 12, 2013, meeting was to suspend the Solid Waste Task Force until the consultant report was completed. The draft Solid Waste Report was finalized in January 2014, and the Task Force was duly reconvened on January 29, 2014 to review this draft report. The Task Force met again on February 19, 2014, to finalize and approve its recommendations to the BCC. The final Solid Waste Report was placed on the County website and sent to commissioners the week of March 3, 2014, and subsequently presented to the BCC, along with the Task Force recommendations, at the March 25, 2014, meeting. Further, the Solid Waste Report was re-sent to the commissioners the week of July 7, 2014.

DISCUSSION:

One of the key Task Force recommendations was to eliminate the annual expiration of the solid waste permits. This was approved by the BCC at the May 27, 2014, BCC.

Other key recommendations of the Task Force are listed below:

1. Modify permit structure type and fee schedule to promulgate 6- and 12-punch permits and to increase the amount of revenue generated by permit sales to 30% of the total solid waste program budget within 5 years.
2. Make permit changes occur along the calendar year instead of the fiscal year.
3. Increase the number of material categories that must be recycled.

Staff is asking for approval of these recommendations now to prepare for the new permits to be available at the beginning of the next calendar year.

The full list of recommendations is attached. The recommendations for which approval is being sought today are 1.1, 1.2, 1.4, and 1.7 on the list, highlighted in yellow. The other recommendations will be brought forward in the future as appropriate.

If the recommendations are approved, next steps would be to publish title and general summary of the ordinance amendment, approval of which would be requested at the next applicable BCC meeting.

ACTION REQUESTED:

Approval of subject recommendations



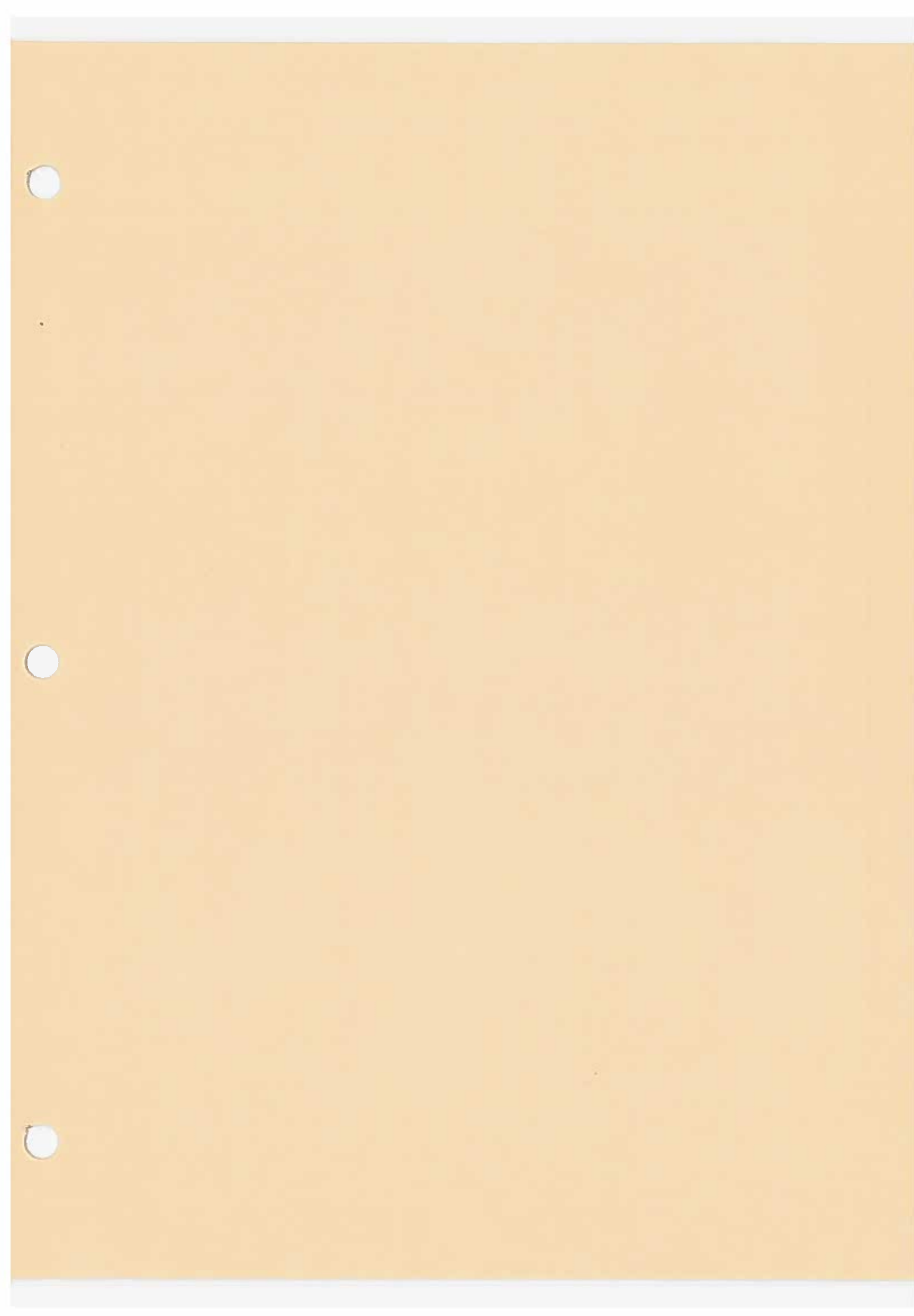
Attachment 1: Summary of Key Recommendations Solid Waste Task Force

Section 1: Cost of Service and Funding Options			
Number	Recommendation	Benefit/Purpose	Status
1.1	Establish new 6- and 12-trip permits. Eliminate expiration of permits. Phase out 24-trip permits. Link to calendar year.	Allows citizens to purchase a permit appropriately-sized for their disposal needs. Eliminating expiration of permits allows citizens to utilize all of their trips.	Subject to approval
1.2	Eliminate the senior permit	Discount should be income-based only – not age-based. Many seniors are in good shape, financially.	Subject to approval
1.3	Eliminate the \$.03 per pound rate	The elimination of this rate will not in any manner adversely impact the refuse services provided by the County. No one uses this rate.	Subject to approval
1.4	Eliminate the separate commercial permits	Commercial permits are minimally used. Commercial users can use the same permit as residential.	Subject to approval
1.5	Educate citizens about the County's CCC program	It is important for the long-term success of the County's rural CCC system to be viewed by County citizens as a valuable service, and one that must be paid for in an equitable manner.	Ongoing
1.6	Monitor monthly the purchase and utilization of permits, by type	This will allow the County to track its revenue and better understand the types of permits being purchased by its citizens.	Ongoing
1.7	Gradually increase permit fees to achieve 30% recovery of costs within 5 years. New permit fees to begin in CY15.	Implementation of the new rates will generate an additional \$450,000 in permit revenue by CY 2019 and more equitably distribute the costs of the CCC system among users and non-users.	Subject to approval

Section 2: Operations of County CCCs					
Number	Recommendation	Location	Benefit/Est. Savings	Priority Level	Status
2.1	Develop and implement operational metrics to measure efficiency.	All CCCs	Improved operation	High	Ongoing
2.2	Improve customer accessibility to drop-off areas.	All CCCs	Improved operation, improved site safety	High	Ongoing
2.3	Optimize payloads to meet or exceed industry standard.	All CCCs	Increased efficiency	High	Ongoing
2.4	Consider reducing days or hours of operation.	San Marcos	Save \$10,000 - \$30,000	High	Subject to approval
2.5	Consider reducing days or hours of operation.	Stanley	Save \$10,000 - \$30,000	High	Subject to approval
2.6	Relocate current center to new site.	Jacona	Increased capacity and improved operation	High	Ongoing
2.7	Improve CCC signage.	All CCCs	Improved operation, less contamination	Medium	Ongoing
2.8	Consider closure of center after opening of new Jacona center.	Nambe	Save \$46,598	Medium	Subject to approval
2.9	Consider closure of center after opening of new Jacona center.	Tesuque	Save \$65,616	Medium	Subject to approval
2.10	Paint all containers. Refuse – one color Recycling – one color	All CCCs	Improved perception, less contamination	Medium	Ongoing

Section 3: Wasteshed Analysis (County Service Levels and Material Flow)			
Number	Recommendation	Benefit/Purpose	Status
3.1	Contracting of residential solid waste haulers in higher densities areas of the Santa Fe metropolitan area.	Private haulers would be awarded an exclusive right to serve within a designated area. Citizen participation would be voluntary (i.e. they could still use the convenience centers if they so choose.) Provides for the provision of recycling services. May reduce rates due to greater volume of accounts. Consider commercial contracting at a later date.	Subject to approval
3.2	Amend solid waste ordinance to require data reporting by all solid waste haulers in the unincorporated County.	Will allow the County to better track and manage refuse and recycling activities throughout the County.	Subject to approval
3.3	Amend solid waste ordinance to include more mandatory recycling categories	Increase recycling	Subject to approval
3.4	Develop a comprehensive data management system.	Such a system could be based on a comprehensive, web-based system, that would allow all three entities to seamlessly access and monitor information on the generation, flow, and disposal of refuse and recyclables in Santa Fe County.	Subject to approval

Section 4: Solid Waste Management System			
Number	Recommendation	Benefit/Purpose	Status
4.1	If the implementation of a solid waste management system (i.e. contract) is approved by the BCC, the County should immediately move forward with planning the development of such a system.	<ul style="list-style-type: none"> • Elimination of multiple vendors serving the same area (i.e. reduced wear and tear on County roads, reduced air emissions) • Provision of curbside recycling, Increased diversion rate • Increase pricing competition 	Subject to approval



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: August 5, 2014

TO: Board of County Commissioners

VIA: Claudia Borchert, Utilities Division Director
Adam Leigland, Public Works Director
Katherine Miller, County Manager *KW*

FROM: Charlie Nylander, Chair, Water Policy Advisory Committee

ITEM AND ISSUE: BCC Meeting August 26, 2014

**PRESENTATION OF AND REQUEST FOR APPROVAL OF WATER POLICY
ADVISORY COMMITTEE RECOMMENDATIONS ON REGIONALIZATION**

SUMMARY:

This is a request of approval for the six recommendations developed by the Water Policy Advisory Committee regarding regional water authorities.

BACKGROUND:

On April 30, 2014, the BCC approved Resolution 2013-42, which created the Water Policy Advisory Committee (WPAC). Resolution 2013-42 also required the WPAC to present for BCC approval in January of each year an annual work plan.

On January 28, 2014, the BCC approved the WPAC's calendar year 2014 work plan. The first task on that plan was to "Explore the concept of regional water/wastewater authority(s) in New Mexico and prepare a White Paper, policy recommendations, and draft resolution for Santa Fe County Board of County Commissioners (BCC) consideration."

The WPAC met extensively, both en banc and in subcommittees, since that time and has prepared the required documents.

DISCUSSION:

The White Paper is a detailed examination of the concept of a regional water authority as well as an in-depth look at existing such authorities in New Mexico. The WPAC differentiates between the concepts of "regionalization" and a "regional water authority." Regionalization is cooperation or collaboration between water/wastewater entities. A regional water authority is a political subdivision of the State that takes the idea of regionalization to its furthest extent. In the end, the

WPAC found that both concepts, in the right context, can provide benefits such as improved economies of scale, better long-term sustainability, and increased technical, managerial, and financial capacity. The WPAC recommends that the BCC pursue and indeed lead the way on both concepts within the County.

The key recommendations of the White Paper, found on its page 6, are summarized below:

1. Determine with the City of Santa Fe and other legal entities that provide water and wastewater services within the Santa Fe area, the mutual level of interest and ultimate benefits in pursuing the regional authority in the Santa Fe metro area.
2. Determine with appropriate representatives from the Pueblo of Pojoaque, Pueblo of Tesuque, Pueblo of Nambe, and Pueblo de San Ildefonso, and other legal entities that provide water and wastewater services in the area, the mutual level of interest and ultimate benefits of pursuing the Water and Wastewater Authority concept in the Pojoaque, Nambe, and Tesuque Valley areas, within a site-specific boundary.
3. Endorse the concept of "regionalization" and encourage and assist small water or wastewater utilities, both public and private, to pursue collaborations and partnerships.
4. Discuss with appropriate representatives within Rio Arriba County and Santa Fe the potential for collaborative efforts to improve water, wastewater, watershed, and storm water management in site-specific areas of the Española Basin in order to promote and improve basin-wide sustainability of water resources.
5. Continue the on-going process update Resolution No. 2012-58 "A Resolution Articulating County Policy Regarding Funding Request From Private, Quasi-Public, or Public Water and Wastewater Systems For Capital Improvements" with a new comprehensive resolution so as to improve this public policy.
6. Consider the pros and cons of supporting enabling legislation that would provide a simple, uniform statutory process to create a Water and Wastewater Authority in New Mexico.

Several documents are attached to this memo. The first is the White Paper itself.

The second is a draft resolution that expresses the BCC's support for the concepts listed above, as described in the 2014 work plan.

The third is a draft regional water authority enabling state statute as described in Recommendation #6. This draft was composed by a state-wide team led by the Rural Community Assistance Corporation and comprising representatives from the OSE, NMED, NMFA, and numerous local jurisdictions. It is presented here as an aid to the BCC as it considers Recommendation #6.

As a reminder, the next task on the 2014 work plan is to "Investigate aquifer storage and recovery (ASR) alternatives and develop a White Paper, policy recommendations, and resolution regarding aquifer storage and recovery to the BCC for approval."

ACTION REQUESTED:

Approve subject recommendations

Attachments:

1. White Paper
2. Draft resolution
3. Draft state resolution

“WATER AND WASTEWATER AUTHORITY CONCEPT”

A WHITE PAPER

EXPLORING THE CONCEPT OF WATER AND WASTEWATER AUTHORITIES IN NEW MEXICO AND THE POTENTIAL FOR THE CREATION OF WATER AND WASTEWATER AUTHORITIES WITHIN THE COUNTY OF SANTA FE

Prepared By

Santa Fe County Water Policy Advisory Committee

July 2014

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ACKNOWLEDGEMENTS

The Board of County Commissioners of Santa Fe County Resolution No. 2013-42, is "A Resolution Establishing a Water Policy Advisory Committee". This resolution was passed, approved, and adopted on April 30, 2013. The Water Policy Advisory Committee (Committee) thanks the Board of County Commissioners for Santa Fe County for their vision in creating Resolution No. 2013-42. The Committee also thanks Adam Leigland, Director, Public Works, Claudia Borchert, Director, Public Utilities, and Paul Casaus, Water Utilities Engineering for their continuing technical support of the Committee in carrying out the scope and duties of the Committee. The following Committee members contributed to the preparation of this White Paper, and deserve recognition and appreciation for their efforts: Charlie Nylander, Chair, Shelley Winship, Co-Chair, Consuelo Bokum, Mukhtiar Khalsa, Bill King, Steve Rudnick, Neal Schaeffer, Sigmund Silber, Rita Loy Simmons, Gil Tercero, and Martha Trujillo.

INTRODUCTION AND ORGANIZATION

The Board of County Commissioners of Santa Fe County Resolution No. 2013-42, is "A Resolution Establishing a Water Policy Advisory Committee". This resolution was passed, approved, and adopted on April 30, 2013 and included in the scope of duties the following:

..."Explore the concept of an independent regional water authority or authorities, including interfacing with the City of Santa Fe, the City of Española, the Town of Edgewood, mutual domestic water consumer associations, and other regional water users regarding a regional water authority or authorities;"...

This White Paper explores the concept of Water and Wastewater Authorities in New Mexico, and contains Water Policy Advisory Committee (Committee) recommendations regarding Water and Wastewater Authorities for further consideration by the County of Santa Fe Board of County Commissioners.

A Water and Wastewater Authority is a generic title for a discrete political subdivision of the State of New Mexico. Thus far, only three have been created by special legislation passed by the New Mexico State Legislature. Committee recommendations are provided on page 6, followed by a table comparing the powers and duties provided in New Mexico Statutes for the most common entities created to provide water and wastewater utilities on page 7 and 8. The Committee found that in order to understand the concept of Water and Wastewater Authorities, it is prudent to also understand the enabling statutes that result in creation of the most common, legally established political subdivisions that have authority to provide water and wastewater utility systems in New Mexico. This general comparison excluded municipalities and counties as political subdivisions in this study (**Note: Committee recommendations and statute summary comments are highlighted in red colored text**). Beginning on page 9, the Committee provides a description of the three Water and Wastewater Authorities in New Mexico, followed by the Committee's discussion of the positive and negative attributes of Water and Wastewater Authorities, the problems solved and/or created, and a discussion of the potential use of the Water and Wastewater Authority concept in the County of Santa Fe. The Committee examines the concept of "Regionalization" on page 16, and provides examples of regional water systems in the County of Santa Fe, with a discussion of the positive and negative attributes and problems solved and/or created. Finally, beginning on page 18, the Committee provides a summary of the most common New Mexico Statutes that are used to create water and wastewater utilities. The Appendix contains additional detailed information regarding the all of the described statutes, and includes the statute verbatim for the three New Mexico water and wastewater authorities.

WATER POLICY ADVISORY COMMITTEE RECOMMENDATIONS

WATER AND WASTEWATER AUTHORITY

The Water Policy Advisory Committee recommends that the County of Santa Fe Board of County Commissioners consider the following actions:

- A. Take the initiative to hold joint meetings and discussions with appropriate representatives from the City of Santa Fe, and other legal entities that provide water and wastewater services within the Santa Fe area, to determine the mutual level of interest and ultimate benefits in pursuing the Water and Wastewater Authority concept to operate and maintain water and wastewater utilities in Santa Fe County within a site-specific area in the vicinity of Santa Fe (See page 13).
- B. Take the initiative to hold joint meetings and discussions with appropriate representatives from the Pueblo of Pojoaque, Pueblo of Tesuque, Pueblo of Nambe, and Pueblo de San Ildefonso, and other legal entities that provide water and wastewater services in the area, in concert with Resolution 2012-53, to determine the mutual level of interest and ultimate benefits of pursuing the Water and Wastewater Authority concept to construct, operate, and maintain water utilities, and also importantly, wastewater utilities in the Pojoaque, Nambe, and Tesuque Valley areas, within a site-specific boundary (See page 15).
- C. Endorse the concept of "regionalization" and encourage and assist small water or wastewater utilities, both public and private, to pursue collaborations and partnerships, that may demonstrate the same benefits of a Water and Wastewater Authority, in order to improve their economies of scale, long-term sustainability, and increase their technical, managerial, and financial capacity to construct, operate, and maintain a water or wastewater utility (See page 16).

OTHER RECOMMENDATIONS

- D. Take the initiative to hold joint meetings and discussions with appropriate representatives within Rio Arriba County and Santa Fe County to discuss the potential for collaborative efforts to improve water, wastewater, watershed, and storm water management in site-specific areas of the Española Basin in order to promote and improve basin-wide sustainability of water resources (See page 16).
- E. Continue the on-going process to review and replace Resolution No. 2012-58 "A Resolution Articulating County Policy Regarding Funding Request From Private, Quasi-Public, or Public Water and Wastewater Systems For Capital Improvements" with a new comprehensive resolution so as to improve this public policy (See page 16).
- F. Consider the pros and cons of supporting legislation that would provide a simple, statutory process to create a Water and Wastewater Authority in New Mexico for management of water and wastewater utility services, that will be applicable to a wide range of utility sizes and customer service areas, that also

enables the management of other beneficial community services including, but not limited to: storm water management, solid waste management, recreational parks, streets and roads, etc., as proposed by an applicant in an application for approval of Water and Wastewater Authority status (See page 54).

The Committee developed the following table with comparative data for those New Mexico statutes reviewed by the Committee, so as to facilitate comparison of specific enabling statutes in New Mexico regarding their general powers and authorities. In order to interpret the table, the following questions are numerically identified in the left hand column of the table.

1. Is a water system created by the statute a public or private entity?
2. Is a water system created by the statute a political subdivision of the state?
3. Does a water system created by the statute have the power of eminent domain?
4. Is a water system created by the statute eligible for state funding from the Water Trust Board or Clean Water and/or Drinking Water State Revolving Loan programs?
5. Does the Special District Procedures Act apply to a water system created by the statute whereby a County has review and approval authority for the special district?
6. Does a water system created by the statute have the power to create a boundary for the service area?
7. Does a water system created by the statute have the power to require service connections?
8. Are the water rates established by a water system created by the statute subject to regulation by the Public Regulation Commission?
9. Is the level of effort required to create a water system under the statute considered easy?
10. Does a water system created by the statute have authority to tax or issue bonds?

A comparison of the answers to these ten basic questions regarding statutory power and authority helps to differentiate the strengths and weaknesses of each statute. Generally speaking, the statutes authorizing the more comprehensive power and authority to a water system result in a stronger organization for the water system. However, it appears that the statutes that authorize the most comprehensive power and authority to a water system are not necessarily easy to implement. For example, the process of creating a water system pursuant to the Water and Sanitation District Act is complicated and can require significant legal effort and management resources.

STATUTE POWER AND AUTHORITY COMPARISON

?	Sanitary Projects Act	Water and Sanitation District Act	Cooperative Association Act	Non-Profit Association Act	Water Authority or Special District
1.	Public entity	Public Entity	Private Entity	Private Entity	Public Entity
2.	Political Subdivision of the State	Political Subdivision of the State	Not a Political Subdivision of the State	Not a Political Subdivision of the State	Political Subdivision of the State
3.	Power of Eminent Domain	Power of Eminent Domain	No Power of Eminent Domain	No Power of Eminent Domain	Power of Eminent Domain
4.	Eligible for State Funding	Eligible for State Funding	Not Eligible for State Funding	Not Eligible for State Funding	Eligible for State Funding
5.	Special District Procedures Act Does Not Apply	Special District Procedures Act Does Apply	Special District Procedures Act Does Not Apply	Special District Procedures Act Does Not Apply	Special District Procedures Act Does Apply
6.	No Authority to Set Service Boundaries	Authority to Set Service Boundaries	Authority to Set Service Boundaries via By-Laws	Authority to Set Service Boundaries via By-Laws	Authority to Set Service Boundaries
7.	No Authority to Require Service Connection	Authority to Require Service Connection	Authority to Require Service Connection via By-Laws	Authority to Require Service Connection via By-Laws	Authority to Require Service Connection
8.	Rates Not Regulated by PRC; Review By NMED	Rates Not Regulated by PRC	Rates Not Regulated by PRC	Rates Not Regulated by PRC	Rates Not Regulated by PRC
9.	Easy to Create Entity	Not Easy to Create Entity	Easy to Create Entity	Easy to Create Entity	Not Easy to Create Entity
10.	No Tax or Bond Authority	Authority for Tax and Bonds	No Authority for Bonds	No Authority for Bonds	Authority for Bonds

NEW MEXICO WATER AND WASTEWATER AUTHORITIES

In New Mexico, a Water and Wastewater Authority is a political subdivision of the state that has been created by statute by the New Mexico State Legislature. Each law defining a Water and Wastewater Authority is, at the current time, tailored to grant specific powers and authorities to the authority. Typically, a Water and Wastewater Authority is authorized to construct, operate, and maintain a water and/or wastewater utility providing service to a specific geographically bounded area of the state. As of July 2014, there are three Water and Wastewater Authorities created in New Mexico by the New Mexico State Legislature. They include: Albuquerque Bernalillo Water Utility Authority; Lower Rio Grande Public Water Works Authority; and the Eastern New Mexico Water Utility Authority. Each of these authorities is more fully described in this section, and their enabling statutes included in the Appendix.

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

[<http://law.justia.com/codes/new-mexico/2013/chapter-72/article-1/>]

The first regional authority in New Mexico was the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) was created in 2003 by combining the water and wastewater utility assets managed by the City of Albuquerque and the County of Bernalillo. The ABCWUA manages water and wastewater utilities independently from both the City of Albuquerque and County of Bernalillo. A brief description on the ABCWUA website states:

"In January 2003, the New Mexico Legislature approved Senate Bill 887 which transferred the municipal Water and Wastewater Utility to the Albuquerque Bernalillo County Water Utility Authority (Water Authority). Senate Bill 887 became law in June 2003 (NMSA 1978 § 72-1-10). In December 2003, the Water Authority, the City and County of Bernalillo entered into an operations and maintenance agreement to continue the day-to-day management of the water utility under the City. The Water Authority completed full transition of administering the water and wastewater utility in July 2007. During the 2005 New Mexico Legislative Session, Senate Bill 879 was passed which provided the Water Authority the statutory powers provided to all public water and wastewater utilities in the state."

History indicates that the creation of the Albuquerque Bernalillo County Water Utility Authority (Authority) was initiated by the State Legislature and not the two entities that were combined. Thus, a number of years were required to develop the working relationship between the formerly separate utilities and transfer assets to the new authority. As this was the first authority to be formed

by the State Legislature, it has been looked upon as the initial model for water and wastewater authority formation. As a political subdivision of New Mexico, the Authority is independent of the City of Albuquerque and Bernalillo County, even though the city and county appoint an equal number of Directors to the Authority's Board of Directors. The autonomy of the Authority allows it to perform water planning on a long-term, regional basis with comprehensive focus on managing water and wastewater utilities without having to deal with competing issues that must be handled by the city and county local governments. Strong leadership within the Authority is required to protect the interests of the Authority and its fiduciary responsibilities to the ratepayers.

The County's population growth in the "North Valley and South Valley" adjacent to the City of Albuquerque in the 1970s and 1980s created public health pressures to extend water and wastewater services into these growth areas. Additionally, it was the overall expansion of population growth in the City of Albuquerque and Bernalillo County during the 1990s and early 2000's that further provided an impetus for State Legislators representing numerous districts within Bernalillo County and the City of Albuquerque to support the concept of a water and wastewater authority for the entire Bernalillo County area. The ability to promote long-range water resource planning, and perform comprehensive infrastructure development and financing on a regional basis, with significant economies of scale valued at >\$10 million dollars, resulted from the development of this water and wastewater authority.

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY [73-26-1 NMSA 1978]

[<http://law.justia.com/codes/new-mexico;2013/chapter-73;article-26/>]

In 2009, the New Mexico State Legislature created a special district in the creation of the Lower Rio Grande Public Water Works Authority [73-26-1 NMSA 1978]. The following description is contained in the legislation.

"73-26-1. Lower Rio Grande public water works authority. (2009)

A. The "Lower Rio Grande public water works authority" is created. The authority is a political subdivision of the state and shall be an independent public body. The authority is composed of Berino mutual domestic water consumers and mutual sewage works association, Desert Sands mutual domestic water consumers association, La Mesa mutual domestic water consumers association, Mesquite mutual domestic water consumers and mutual sewage works association and Vado mutual domestic water

consumers association, all serving unincorporated communities within Dona Ana County. The voting community membership of the five founding entities approved by resolution the development of the authority.

Water Policy Advisory Committee Summary and Comments:

The Lower Rio Grande Public Water Works Authority (LRGPWWA) is a political subdivision of the state and is an independent public body. The LRGPWWA is composed of five (5) mutual domestic water consumer associations that existed prior to 2009, and were originally organized pursuant to the Sanitary Projects Act [3-29-1 NMSA 1978]. The LRGPWWA may provide water and wastewater service, road improvements for the protection of the authority's infrastructure, or renewable energy projects that are integral to the operation and maintenance of the authority's facilities. The LRGPWWA is subject to the rules and regulations of the New Mexico Environment Department and Office of State Engineer, but not subject to the jurisdiction of the Public Regulation Commission or the provisions of the Public Utility Act [62-3-1 NMSA 1978]. The LRGPWWA boundaries are those of the original five (5) mutual domestic water consumer associations, and the authority may exercise the power of eminent domain, as a last resort to construct, maintain, and operate authority infrastructure. The LRGPWWA has the authority to issue revenue bonds. The initial Board of Directors consists of one appointed representative from each of the original five (5) associations. Thereafter, Board Members are elected from not fewer than five (5), but not more than seven (7) electoral districts. The LRGPWWA was conceived using special legislation so as to specifically tailor the powers and authorities to fit the desires and needs of the original five (5) non-contiguous associations and stipulate the manner and level of oversight by state agencies. Although under the Sanitary Projects Act associations can be merged into a singular entity, the Sanitary Projects Act did not provide the desired legal powers and authorities enumerated in the LRGPWWA enabling statute. The Water and Sanitation District Act was considered as a statutory basis for utility organization, but it was deemed too complicated.

The Lower Rio Grande Public Water Works Authority combined the assets and service boundaries of five (5) mutual domestic water consumers associations. In making the transition, the new water authority was able to decrease customer water rates for several of the former entities, and eliminate redundant association offices and labor requirements. All assets of the former independent water utility entities and their infrastructure were dedicated to the new water authority, including water rights, and the new water authority consolidated all of the former debts and liabilities of the five entities. An overall improvement in the economies of scale was significant. Although the legislative process to form a water authority was time-consuming and required a commitment of resources, the end result has been deemed very positive. In point of fact, a number of other adjacent mutual domestic water consumer associations have voiced an interest

in merging with the water authority. Moreover, with the creation of the water authority increased subdivision growth has occurred, and small businesses are moving into the water authority area promoting economic growth.

EASTERN NEW MEXICO WATER UTILITY AUTHORITY [73-27-1 NMSA 1978]

[<http://law.justia.com/codes/new-mexico;2013/chapter-73/article-27/>]

The Eastern New Mexico Water Utility Authority [73-27-1 NMSA 1978] was created in 2010 by the New Mexico State Legislature. As a special district, the Eastern New Mexico Water Utility Authority (ENMWUA) was created coextensive with the boundaries of Curry and Roosevelt Counties for the benefit of the seven members of the authority, including Curry County, the City of Clovis, the City of Portales, the City of Texico, the Town of Melrose, the Town of Elida, and the Village of Grady.

Water Policy Advisory Committee Summary and Comments:

The Eastern New Mexico Water Utility Authority [73-27-1 NMSA 1978] is the most recent special district to be created as a water utility authority. A water utility authority was deemed necessary in eastern New Mexico to provide an organized structure to work with state, local and federal agencies to complete a water delivery system from the Ute Reservoir to local governments. The enabling legislation specifically grants powers and authority regarding constructing, operating, and maintaining a water system only. The water utility authority has the power of eminent domain, with limitations, and is allowed to perform water use planning on a forty (40) year planning horizon. The water utility authority has the power and authority to issue revenue bonds.

The primary motivation to create a Special District as the Eastern New Mexico Water Utility Authority was the greater regional need to secure a more reliable source of potable water via the Ute Pipeline Project for multiple population centers. With the water security future of numerous separate municipal and county entities at stake, the derivation of special legislation to create a single cross-county water utility authority as the entity to leverage funding and management of the water system infrastructure was of paramount importance.

POSITIVE AND NEGATIVE ATTRIBUTES; PROBLEMS SOLVED AND CREATED

The three existing water and wastewater authorities were all created by special legislation tailored specifically to each entity. Two of the authorities have jurisdiction over both water and wastewater utilities, while the third authority on the east side of New Mexico just has authority over water. As previously stated, the Albuquerque Bernalillo County Water Utility Authority was created in 2003. The process to become an authority was not initiated by the city and county, but rather was initiated by the State Legislature. The other two authorities were created in 2009 and 2010, and were initiated by multiple entities requesting to be combined into a water and wastewater authority structure. History has proven that although the legislative process to become a water and wastewater authority is arduous and requires dedicated personnel and resources on the part of the entities requesting the status of a water and wastewater authority, the ultimate outcome is worth the time and effort. Each of the three existing regional authorities has been demonstrated to be a success. The utilization of the water and wastewater authority concept has proven to improve economies of scale, enhance regional planning for infrastructure and water resources, leverage infrastructure financing, and achieve the technical, managerial, and financial capabilities to adequately manage a water and wastewater utility.

REGIONAL WATER SYSTEMS IN THE COUNTY OF SANTA FE

Buckman Direct Diversion Project

The Buckman Direct Diversion (BDD) Project is a public works water infrastructure project that was built to divert, treat, and deliver Native Rio Grande water and San Juan Chama Project water, the water rights for which are either owned or leased by the City of Santa Fe, County of Santa Fe, Las Campanas Water and Sewer Cooperative (CoOp), and the Club at Las Campanas (Club). The BDD is a regional water system providing water to the City of Santa Fe, County of Santa Fe, the CoOp, and the Club. The BDD Project was jointly funded locally by the City of Santa Fe, County of Santa Fe, and Las Campanas Limited Partnership, and there was no federal funding requested or provided for the ~\$225 million project. A BDD Project Board of Directors governs the permitting, design, construction, operation, and maintenance of the BDD Project. The Board of Directors consists of five (5) Board Members: two (2) County Commissioners; two (2) City Councilors; and one (1) public member at large appointed by a majority of the county and city members.

Management of the BDD Project is subject to numerous multi-party documents including the: Water Resources Agreement and Joint Powers Agreement developed between the City of Santa Fe and the County of Santa Fe in 2005; a Facility Operating

and Procedures Agreement (FOPA) dated 2007; and a Project Management and Fiscal Services Agreement (PMSF) dated 2007. Although the governing documents are somewhat dated and need amendment, each continues to provide the basis for joint ownership and management. As a jointly funded project, the BDD Project is currently managed and operated by personnel employed by the City of Santa Fe (currently the City of Santa Fe is the designated Project Manager). On December 1, 2015 according to language in a Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe the Project Manager must be re-appointed. The re-appointment can be made to the City, County, or a regional entity. The County of Santa Fe's Board of County Commissioners have requested that the Water Policy Advisory Committee explore the concept of regional water and wastewater authorities and provide a recommendation to the Board as to whether the concept of regional authorities would have a viable application for the BDD Project Manager.

On August 8, 2013 the BDD Board directed BDD staff to create a Project Manager Selection Process Committee, with the task of developing a recommendation for an open and objective process by which the BDD Board can make a thoughtful and reasoned selection of the BDD Project Manager. The Project Manager Selection Process Committee recommended a selection process, and the BDD Board has approved the process earlier in 2014 that would consist of evaluating and ranking four (4) potential Project Managers, i.e. the Sangre de Cristo Water Division (City); County Water Utility; and two (2) notional regional entities that have been described as a Level 1 Modified Status Quo or Level 2 Solid Waste Management Authority (SWMA) model, based on the regional structure of the SWMA as a model. Thus, the BDD Board has approved a "path forward" for making their re-appointment of a BDD Project Manager in time for the December 1, 2015 deadline, unless other alternatives are advanced for defining a "regional entity" on a timely basis.

Ultimately, if the concept of a water and wastewater authority were to be implemented for this regional water system in the immediate area of Santa Fe, through joint decision-making by the City of Santa Fe and the County of Santa Fe, the benefits could include: improved water resource management; more efficient use of infrastructure; operating economies of scale; water and sewer rate parity; greater leverage with outside agencies; and better labor market efficiencies. For example, presently the county customer rates for wastewater utilities is \$6.54/month fixed and \$3.50/1000 gallons/month volumetric rate. However, the City of Santa Fe charges the county as a wholesale customer, a wastewater treatment rate of \$4.29/month fixed rate and \$3.95/1000 gallons/month volumetric rate. The county wastewater customers in effect could be paying twice for their service, except that the county subsidizes the city charges by absorbing the city costs out of their water customer revenue. If a water and wastewater authority were to replace the city and county water and wastewater utilities, the single rate structure could ensure improved parity among the customer base, and improve long-range planning for water supplies, infrastructure, storm water management and reclaimed wastewater production and use.

A water and wastewater authority in the immediate Santa Fe area could define its boundaries to either include or not include adjacent entities that provide water utility

service. For example, a new authority could include the Eldorado area within its boundary, or exclude Eldorado and just provide water utility services to ~2,200 Eldorado customers via a service agreement. Including Eldorado would entail the regional authority absorbing the debts and liabilities of the Eldorado Water and Sanitation District, whereas just providing a water utility service would add more customer base to the water and wastewater authority. The decision where to draw the water and wastewater authority boundary should be always be made on a rational economic cost/benefit analysis as well as a comprehensive engineering feasibility analysis.

Aamodt Settlement and Pojoaque Basin Regional Water System

The State of New Mexico, the United States, Santa Fe County, the City of Santa Fe, and the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque have entered into a Settlement Agreement that determines the water rights of the four Pueblos in the Aamodt adjudication that spanned 48 years from its beginning in May 1966. The goals of the Aamodt Settlement are to resolve the Pueblos' water right claims while preserving existing non-Pueblo water uses. This goal is achieved by importing more water into the basin through the construction of a regional water system for both the Pueblos and non-Pueblo water users, and protecting the surface and ground water in the basin.

The regional water system would consist of a surface diversion facility at the Pueblo de San Ildefonso on the Rio Grande and treatment, transmission, storage (including above ground storage tanks and sub-surface storage using aquifer storage and recovery [ASR] wells), and distribution facilities and well fields that will supply up to 4,000 acre feet of water annually to customers within the Pojoaque-Nambe-Tesuque sub-basins. The regional water system would deliver 2,500 acre feet per year to the four Pueblos and 1,500 acre feet per year to the non-Pueblo water customers in Santa Fe County. The surface water diversion structure in the Rio Grande, as currently proposed, would include an intake, raw water pump station, and pipeline located on the east bank of the Rio Grande just north (upstream) from the Otowi Bridge. The regional water system will be developed in phases beginning in 2018, with the diversion and treatment facilities to be constructed first, prior to the phased distribution system projects. The approximately \$100 million cost of the overall project will be largely funded by the federal government, with cost sharing through local contributions.

In addition, the Pueblo of Pojoaque has an advanced wastewater treatment facility, the entry works of which was constructed over-sized to accommodate future regional growth. Moreover, the treatment plant was constructed in such a manner as to be "expandable" over time, as influent volumes increase. In recent years, Pueblo of Pojoaque Governor George Rivera has extended an offer to the Pueblos of Nambe, Tesuque, and San Ildefonso to allow them to tie into the "regional wastewater treatment plant" without any issues with easements and rights-of-way. Adjacent non-Pueblo residents residing in Santa Fe County are also eligible to tie into the regional wastewater system. The County of Santa Fe has historically provided funding assistance to the treatment plant, so in essence there exists the beginning of a regional wastewater system in the Pojoaque Valley.

The ultimate nature and structure of the organization that will be charged with the management of the regional water system has yet to be determined. However, the structure of the management organization will largely be determined through negotiations and decision-making by the four individual and sovereign Pueblos and the County of Santa Fe. Given the length of time required to design and construct the regional water system (with preparation of an Environmental Impact Statement and conduct of an Asset Inventory Study currently underway), it would make sense for meetings and discussions to be undertaken between the responsible parties to decide on the best structure and collaborative legal method to be ultimately used to implement and entity to manage this large regional water (and possibly wastewater) utility system.

“REGIONALIZATION”

In contrast to these legislatively-created water and wastewater authorities, the concept of “*regionalization*” for water associations is a burgeoning activity in New Mexico, currently endorsed and encouraged by the New Mexico Environment Department (NMED), Office of State Engineer (OSE), and other non-governmental entities, e.g. Rural Community Assistance Corporation (RCAC), and New Mexico Rural Water Association (NMRWA). Regionalization can provide many of the benefits of a water and wastewater authority without pursuing a legislative reorganization. Generally speaking regionalization describes the process or practice whereby two or more small water systems collaborate to develop improved economies of scale for the long-term sustainability of their community water systems. Most of the small water systems engaged in regionalization were originally created pursuant to the Sanitary Projects Act [3-29-1 NMSA 1978], and are presently using or pursuing various practical and legal means to regionalize, including but not limited to: development of agreements to share the cost of administrative, operational, and management personnel; equipment sharing; joint bulk procurement and warehousing; combining two or more mutual domestic water consumer associations pursuant to the Sanitary Project Act (Note: not necessarily requiring a physical interconnection of infrastructure); combining two or more mutual domestic water consumer association by utilizing a joint powers agreement or other legal mechanism; or pursuing the formation of a water and wastewater authority by special legislation.

POSITIVE AND NEGATIVE ATTRIBUTES; PROBLEMS SOLVED AND CREATED

The motivation for pursuing the concept of either “*regionalization*” or the formation of a legislatively created water and wastewater authority is primarily driven by economics and long-term sustainability of water and wastewater utilities. In New Mexico there are more than three hundred (300) mutual domestic water consumer associations and dozens of private cooperative water associations. The limited size of the customer base of these small water systems and modest water billing rates result in an inadequate revenue base for long-term water system sustainability. All of the small water utilities are challenged by inadequate technical, managerial, and financial

capabilities (aka TMF capacity). As each of these water systems is managed by a volunteer board of directors, and is challenged by increasing costs for repair, equipment replacement, certified operators, electricity, supplies, employees, environmental sampling and compliance, over time each system becomes more unsustainable. Moreover, financial assistance in the form of grants has become increasingly unavailable, while the eligibility requirements for qualification for low-interest loans have increased dramatically beyond a small water systems capabilities and financial resources. Thus, generally-speaking given today's present economic and regulatory conditions, small water utilities by definition are increasing not capable of long-term sustainability.

Thus, small water utilities are searching for ways to economize and develop the TMF capacity they need to meet eligibility requirements for low-interest infrastructure loans. By pursuing various methods of "*regionalization*" the small water utilities can improve their revenue balance sheet and/or save costs, and develop improved TMF capacity. However, in New Mexico the small water utilities, whether public or private, are fiercely independent. They are more likely to depend on the good will of local elected officials at the county government level and their state legislators to "bail them out". By and large, the small water utilities do not willingly undertake collaborative approaches with other adjacent small water utilities to gain economies of scale. So, this is where agencies like NMED, OSE, RCAC, NMRWA, and county governments come into play in encouraging the pursuit of *regionalization*, including and up to the point of development of a regional authority.

However, the problems that can be created by combining two or more small water utilities can include: failure at a larger scale due to inadequate TMF capacity; territorial management disputes; higher water rates; and increased expenses for increased engineering and legal services.

POTENTIAL FOR USE OF THE WATER AND WASTEWATER AUTHORITY CONCEPT

As can be determined from the Committee's review and comparison of New Mexico statutes enabling entities to: construct, operate, and maintain water and wastewater utilities in New Mexico, there are significant differences in the power and authority granted to such entities. Those entities organized pursuant to the Sanitary Projects Act have the least amount of power and authority, while those entities organized pursuant to the Water and Sanitation District Act or as a Water and Wastewater Authority have the greatest amount of power and authority, as designated political subdivisions of the state. Those entities organized pursuant to the Cooperative Association Act have substantial power and authority, however they are not political subdivisions of the state, and therefore do not qualify for public funding from the New Mexico Water Trust Board and New Mexico revolving loan programs for water and

wastewater infrastructure. At present, the three entities organized by special legislation as water and wastewater authorities have significant power and authority. However, the process to become a water and wastewater authority under current law is arduous, time consuming, and subject to the unpredictable legislative process. Moreover, once designated as a legal water and wastewater authority, an entity must fulfill numerous obligations requiring utility management and operation at a very sophisticated level.

Therefore, in Santa Fe County there are just a few existing entities at present that could be considered as potential candidates for the status of a water and wastewater authority. Those candidates include: joint pursuit of water and wastewater authority status by the City of Santa Fe and the County of Santa Fe in order to provide water and wastewater utilities on a regional basis in the Santa Fe area; and joint pursuit of a water and wastewater authority status by the four (4) Aamodt Pueblos and the County of Santa Fe in order to provide water and wastewater utilities on a regional basis in the Pojoaque, Tesuque, and Nambe valley areas. However, regarding both of these potential candidates for water and wastewater authority status, the collaborating entities would have to make the determination that seeking water and wastewater authority status would be the most desirable method to operate and maintain water and wastewater utilities in their collective geographical regions, as compared to utilizing other New Mexico statutes and legal mechanisms to accomplish the same end goal. Other small water and wastewater entities in the county could benefit from "regionalization" and cooperative partnerships, but are not as likely to be candidates for full water and wastewater authority status, and should pursue regionalization using existing enabling statutes, joint power agreements, and other legal mechanisms.

If the concept of water and wastewater authorities were to be considered for implementation in the southern portion of the County of Santa Fe, the concept should entertain a water and wastewater authority concept with boundary areas in multiple counties, as communities in the southern portion of the county are most likely to desire a partnership with other legal entities in the Estancia Basin.

NEW MEXICO STATUTES COMMONLY USED TO CREATE WATER AND WASTEWATER UTILITIES

The following New Mexico Statutes were reviewed by the Committee to determine differences in the enabling statutes regarding their delegation of power and authority. The title of each statute is followed by a website reference for more information. A Committee summary of each statute reviewed is provided, and additional information is detailed in the Appendix.

MUTUAL DOMESTIC WATER CONSUMER ASSOCIATIONS

AND THE

SANITARY PROJECTS ACT [3-29-1 NMSA 1978]

[<http://law.justia.com/codes/new-mexico/2013/chapter-3/article-29/>]

Water Policy Advisory Committee Summary and Comments:

There are dozens of Mutual Domestic Water Consumer Associations within the County of Santa Fe, e.g. Greater Chimayo Mutual Domestic Water Consumer Association, Agua Fria Community Water Association, Cañoncito Mutual Domestic Water Consumer Association, etc. that were created pursuant to the Sanitary Projects Act. The Sanitary Projects Act, as an enabling statute, provides for the basic framework for a political subdivision of the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good. However, the Sanitary Projects Act does not specifically address the boundaries of an association, nor contain language that mandates user connections to a water or wastewater system. Although the statutory provisions for local administration of an association and for adoption of bylaws and establishment of rules are written in broad terms that might enable an association to set boundaries and require user connections.

The statutory oversight provisions for the environment department and public regulation commission are respectively viewed as discretionary and limited. Thus, the committee determined that the management of mutual domestic water consumer associations by state agencies is underwhelming. Moreover, associations are exempt from all review and requirements set forth in the Special District Procedures Act [4-53-1 NMSA 1978], so New Mexico's county governments do not review and approve Mutual Domestic Water Consumer Associations.

Associations may establish the fees, rates, and tolls of the association services, which are not regulated by the Public Regulation Commission. Because these associations are managed by a volunteer Board of Directors selected from the association membership, technical, managerial, and financial capabilities are often compromised and/or lacking. Associations are challenged in: management of growth and expansion; setting rates; billing collections; resolving customer disputes; organizational stability; and managing long-term debt liabilities. Due to the small customer base of these water utilities, customer revenues from the monthly sale of water are most often inadequate to operate and maintain the water system. Ever-increasing environmental regulatory requirements, energy costs, labor costs, and equipment maintenance and replacement costs coalesce to challenge the sustainability of these small water systems. Eligibility requirements for public funding through grants and loans have become all but impossible for associations to meet in order to seek public financial assistance.

Although the Sanitary Projects Act provides for the merger of two or more Mutual Domestic Water Consumer Associations, the underpinning powers and authorities granted by the statute do not necessarily provide the necessary tools and organizational structure for a successful regionalization of two or more entities merged under this statute. The statute in general is considered weak due to its limitations regarding powers and authorities granted to mutual domestic water consumer associations.

**COOPERATIVE ASSOCIATIONS
AND THE
COOPERATIVE ASSOCIATIONS ACT [53-4-1 NMSA 1978]
[<http://law.justia.com/codes/new-mexico/2013/chapter-53/article-4/>]**

Water Policy Advisory Committee Summary and Comments:

There are Cooperative Associations with the County of Santa Fe, e.g. Las Campanas Water and Sewer Cooperative, created pursuant to the Cooperative Associations Act. The Cooperative Associations Act [§ 53-4-1 NMSA 1978], as an enabling statute, provides for the basic framework for developing an enterprise that can provide water and wastewater services, and by definition is deemed to be a non-profit corporation. An association formed under this statute is a private entity and not a political subdivision of the state, and thus an association formed under this Act is not eligible to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to fund the operation and maintenance of such facilities from the New Mexico Water Trust Board, the New Mexico Clean Water Act Revolving Loan Fund, or the New Mexico Safe Drinking Water Act Revolving Loan Fund. The Cooperative Associations Act does not specifically address the boundaries of an association, nor contain language that mandates user connections to a water or wastewater system. However, the by-laws of a Cooperative Association can establish the service area boundaries and mandate user connections. A Cooperative Association does not have the power of eminent domain. A Cooperative Association must file an annual report with the Public Regulation Commission, but the Commission does not regulate the service rates established by a Cooperative Association.

NON-PROFIT CORPORATIONS

AND THE

NON-PROFIT CORPORATION ACT [53-8-1 NMSA 1978]

[<http://law.justia.com/codes/new-mexico/2013/chapter-53/article-8/>]

Water Policy Advisory Committee Summary and Comments:

Although conceivably a water and/or wastewater service provider could attempt to organize under this statute, the Cooperative Association Act [53-4-1 NMSA 1978] serves as the better founding statute for numerous reasons. Non-profit corporations formed under the Non-Profit Corporations Act are similar to cooperative associations in that they are not designated as a political subdivision of the state, and thus are not eligible for public funding from the New Mexico Water Trust Board, New Mexico Clean Water Act Revolving Loan Fund, or New Mexico Safe Drinking Water Act Revolving Loan Fund. Like cooperative associations, non-profit corporations lack the power of eminent domain, which is a necessary attribute for establishing water and sewer lines. Also, Non-profit corporations cannot assess their members, nor distribute any profit to their members. In essence, this statute is not best suited for the provision of water or wastewater utility services.

WATER AND SANITATION DISTRICTS

AND THE

WATER AND SANITATION DISTRICT ACT [73-21-1 NMSA 1978]

[<http://law.justia.com/codes/new-mexico;2013/chapter-73/article-21/>]

Water Policy Advisory Committee Summary and Comments:

The Eldorado Water and Sanitation District is located in the County of Santa Fe, and was created pursuant to the Water and Sanitation District Act. In comparison to the Sanitary Projects Act, Cooperative Associations Act, and Non-Profit Corporations Act, the Water and Sanitation District Act provides the most detailed and comprehensive general enabling statute that can be utilized by an entity to establish, operate, and maintain a water or wastewater utility, aside from those statutes that enable municipal

and county political subdivisions of the state. A Water and Sanitation District is a political subdivision of the state and is enabled with broad powers and authorities, including the authority to levy and collect taxes; issue revenue bonds; establish boundaries; use the power of eminent domain and dominant eminent domain; include additional property or exclude property from the district; and have oversight over additional community amenities in addition to water and wastewater utilities, including: garbage and refuse disposal; park and recreational facilities; streets, sidewalks, bridges, street lighting, overpasses, and underpasses; and other public facilities or economic development projects. In addition, an entity that forms a Water and Sanitation District can select those facilities and services it desires to establish authority over, so the enabling statute can be used in a menu-fashion to tailor the purpose(s) of its use. However, this statute is complex and will require legal assistance to navigate the application process. Once established, a water and sanitation district will require advanced capabilities in technical and financial management to meet the requirements of the statute.

SPECIAL DISTRICTS

[<http://law.justia.com/codes/new-mexico/2013/chapter-73/>]

Chapter 73 of the New Mexico Statutes Annotated (NMSA) contains various laws enabling special districts in New Mexico. For the sake of thoroughness, the following listing of special districts is provided to illustrate the variety of special districts, and their respective authorities and purposes. Several of these special districts are addressed in more detail in this White Paper.

2013 New Mexico Statutes

Chapter 73 - Special Districts

- [Article 1 - Artesian Conservancy Districts](#)
- [Article 2 - Ditches or Acequias](#)
- [Article 2A - Acequia and Community Ditch Fund](#)
- [Article 3 - Ditches or Acequias; Special Provisions Governing Certain Counties](#)
- [Article 4 - Mill Ditches](#)
- [Article 5 - Water Users' Associations](#)
- [Article 6 - Drainage Districts; Formation](#)

- Article 7 - Drainage Districts; Construction, Operation and Maintenance
- Article 8 - Drainage Districts Within Federal Reclamation Projects
- Article 9 - Irrigation Districts
- Article 10 - Irrigation Districts Cooperating with United States Under Reclamation Laws; Formation and Management
- Article 11 - Irrigation Districts Cooperating with United States Under Reclamation Laws; Fiscal Affairs; Local Improvements and Special Powers
- Article 12 - Electrical Irrigation Districts
- Article 13 - General Provisions Relating to Irrigation Districts
- Article 14 - Conservancy Districts; Definitions; Organization and Management
- Article 15 - Conservancy Districts; Appraisal of Benefits
- Article 16 - Conservancy Districts; Financial Administration
- Article 17 - Conservancy Districts; General Provisions
- Article 18 - Conservancy Districts; Reclamation Contracts
- Article 19 - Tri-State Water Conservancy Association
- Article 20 - Soil and Water and Watershed Conservation Districts
- Article 21 - Water and Sanitation Districts
- Article 22 - Wind Erosion Districts
- Article 23 - Resource and Transportation Development
- Article 24 - Joint Flood and Drainage Planning Assessments
- Article 25 - Regional Transit District
- Article 26 - Lower Rio Grande Public Water Works Authority
- Article 27 - Eastern New Mexico Water Utility Authority

The Cuatro Villas Water User Association located in the County of Santa Fe was created pursuant to Article 5 of the Chapter 73, Special Districts. Even though this statute applies primarily to irrigation districts, it can be used to create an association to manage a drinking water system.

SPECIAL DISTRICTS PROCEDURES ACT [4-53-1 NMSA 1978]

[<http://law.justia.com/codes/new-mexico/2013/chapter-4/article-53/>]

Chapter 4, Article 53 NMSA 1978 relates to Counties and Special District Procedures.

Water Policy Advisory Committee Summary and Comments:

The Special District Procedures Act [4-53-1 NMSA 1978] is a procedural statute granting authority to New Mexico counties to review and approve special districts created within a county. The statute applies to the creation of Water and Sanitation Districts, Water User Associations, Water and Wastewater Authorities, and other legal entities that are defined as special districts. The Special District Procedures Act does not apply to Cooperative Associations and Non-Profit Corporations. Associations formed pursuant to the provisions of the Sanitary Projects Act [3-29-1 NMSA 1978] are exempt from the Special District Procedures Act, pursuant to § 3-29-21 of the Sanitary Projects Act.

APPENDIX

MUTUAL DOMESTIC WATER CONSUMER ASSOCIATIONS AND THE SANITARY PROJECTS ACT [3-29-1 NMSA 1978]

DEFINITIONS:

As used in the Sanitary Projects Act [3-29-1 NMSA 1978]:

- A. "community" means a rural unincorporated community and includes a combination of two or more rural unincorporated communities when they have been combined for the purposes set forth in the Sanitary Project Act. [3-29-2 A. NMSA 1978;
- B. "association" includes an association or mutual domestic water consumers association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act;
- C. "department" means the department of environment;
- D. "member" or "membership" means a person who has paid the appropriate fees and has been issued a certificate as required by association bylaws;
- E. "person" means a single residence or property owner, as determined by the rules adopted by the association's board of directors; and
- F. "project" means a water supply or reuse, storm drainage or wastewater facility owned, constructed or operated by an association.

PURPOSE:

The Sanitary Project Act (Chapter 3, Article 29 NMSA 1978 was enacted with the following purpose:

"The purpose of the Sanitary Projects Act [3-29-1 NMSA 1978] is to improve the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the state to receive public funds for acquisition, construction, and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good." [3-29-3 NMSA 1978].

As used in the Sanitary Projects Act, "community" means a rural unincorporated community and includes a combination of two or more rural unincorporated communities when they have been combined for the purposes set forth in the Sanitary Project Act. [3-29-2 A. NMSA 1978. Thus, the Sanitary Projects Act which was first adopted in 1947 was intended to have a focus on rural communities in New Mexico.

BOARD OF DIRECTORS; POWERS AND DUTIES:

Selected powers and duties include:

- the board of directors of each association shall be responsible for the acquisition or purchase of all property, rights of way, equipment and materials as may be necessary for the completion of a project;
- the association, acting through its board of directors, may exercise the right of eminent domain to take and acquire the necessary property or rights of way for construction, maintenance and operation of water and sewer lines and related facilities, but such property and rights of way shall in all cases be so located as to do the least damage to private and public property consistent with proper use and economical construction;
- the board of directors of the association may set and, from time to time, increase or adjust assessments, water and sewer rates, tolls or charges for services or facilities furnished or made available by the association;
- the assessments, tolls and charges may include;
 - 1) membership fees;
 - 2) a base monthly service fee for each active connection delivering water;
 - 3) a base monthly service fee for each inactive connection;
 - 4) a standby charge for the privilege of connecting into the association's water service at some date in the future;
 - 5) assessments based on the volume of water delivered;
 - 6) a connection charge; and
 - 7) an assessment necessary to cover the cost of extending either water or sewer service.
- the board of directors of the association may place a lien on property to which services have been extended in the amount of all outstanding assessments, charges and fees associated with the services;
- after notice is given, the board of directors of the association shall shut off unauthorized connections, illegal connections or a connection for which charges are delinquent in payment;
- the board of directors of the association shall prescribe and enforce rules for the connection to and disconnection from properties or facilities of the association; and
- each member of the board of directors of the association shall complete training, as determined by rules of the department.

According to §3-29-15 an association shall constitute a public body corporate, as follows:

"Upon the filing of each certificate and copy thereof as provided in Section 3-29-17 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association constitute a public body corporate

by the name set forth in the certificate and by such name may be sue and be sued, have capacity to make contracts, acquire, hold, enjoy dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization."

The certificate of association [3-29-16 NMSA 1978] and association bylaws shall be acknowledged as required for deeds of real estate and shall be filed with the office of the public regulation commission. An association is required to file an annual report with the public regulation commission that provides the name of the association; the address of the registered office of the association; a brief statement of the character of affairs that the association is actually conducting; and the names and respective addresses of the directors and officers of the association.

In addition to the public regulation commission reporting, the New Mexico Environment Department (department) has broad oversight powers over associations. §3-29-7 NMSA 1978 defines the powers of the department.

DEPARTMENT POWERS:

- "The department may:
 - 1) conduct periodic reviews of the operation of the association;
 - 2) require the association to submit information to the department;
 - 3) require submittal of financial reports required pursuant to the Audit Act [12-6-1 NMSA 1978];
 - 4) review and require changes in the rate-setting analysis described in §3-29-12 NMSA 1978;
 - 5) after a hearing, intervene in the operation and management with full powers, including the power to set and collect assessments from members of the association, to set and collect service charges and use the same for the proper operation and management of the association; and
 - 6) appoint and delegate authority to a representative to oversee operation of the association for a specified period;
- The department may in its discretion or shall, upon petition of twenty-five percent of the members of the association, conduct investigations as it deems necessary to determine if the association is being operated and managed in the best interests of all the members of the association;
- Whenever the department determines that an association violated or is violating the Sanitary Projects Act or a rule adopted pursuant to that act, the department may:
 - 1) Issue a compliance order requiring compliance immediately or within a specified time period, or both; or
 - 2) Commence civil action in district court for appropriate relief, including injunctive relief.

- For purposes of the Sanitary Projects Act, the department may perform such acts and prescribe such rules as are deemed necessary to carry out its provisions (rules shall be drafted in consultation with representatives of the associations).

MEMBERSHIP:

All persons within a community who participate or desire to participate in any project may become members of an association upon complying with the rules and regulations prescribed by the board of directors of the association, such rules and regulations to meet with approval of the department.

LOCAL ADMINISTRATION OF ASSOCIATION; Board of Directors:

- The local administration of the association and operation and maintenance of the project shall be carried out in each community by a board of directors composed of an odd number of at least three members. Members of the board of directors shall:
 - 1) Be elected annually or as specified in the bylaws of the association;
 - 2) Be members in good standing of the association; and
 - 3) Serve staggered terms of up to four years to ensure that terms will end in different election years.
- The board of directors shall choose among its members a president, a vice president, and a secretary-treasurer or a secretary and a treasurer.
- Funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff.
- The rate-setting analysis may be reviewed and changed if necessary on a yearly basis, and the funds shall be obtained by the association by a monthly assessment against the users of the facilities, the assessment to be determined by the board of directors.
- The board of directors of the association shall have the power to do all things necessary in the local administration of any project subject to the provisions of the Sanitary Projects Act.

BYLAWS:

- Members shall adopt bylaws by no less than a majority vote of a quorum of the membership of the association.
- The department may prescribe by rule guidelines for bylaws and rules of an association.

REORGANIZATION OF COOPERATIVE ASSOCIATIONS AND NONPROFIT CORPORATIONS PURSUANT TO THE SANITARY PROJECTS ACT:

- Cooperative associations formed pursuant to Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit corporations formed under the Nonprofit Corporation Act [53-8-1 NMSA 1978] may reorganize under the Sanitary Projects Act [3-29-1 NMSA 1978] upon approval of the reorganization by a majority vote of a quorum of the members of a cooperative association or nonprofit corporation.

MERGER OF TWO OR MORE ASSOCIATIONS INTO ONE ASSOCIATION:

- Upon approval by vote of a majority of a quorum of each membership, two or more associations may merge into one association pursuant to a plan of merger.

EXEMPTION FROM SPECIAL DISTRICT PROCEDURES ACT PROVISIONS:

- An association formed pursuant to the provisions of the Sanitary Projects Act [3-29-1 NMSA 1978] may be formed exclusively as provided in that act, and formation of the association shall be exempt from all review and requirements set forth in the Special District Procedures Act [4-53-1 NMSA 1978].

COOPERATIVE ASSOCIATIONS AND THE COOPERATIVE ASSOCIATIONS ACT [53-4-1 NMSA 1978]

PURPOSE:

The purpose of the Cooperative Associations Act (§ 53-4-1 NMSA 1978, as first adopted in 1939 is:

"An association may be incorporated hereunder to engage in any one or more lawful modes or acquiring, selling, producing, building, operating, manufacturing, furnishing, exchanging or distributing any types of property, commodities, goods or services, and for the transaction of any lawful business."

POWERS:

"An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted herein and also:

- A. To continue as a corporation for the time specified in its articles;
- B. To have a corporate seal and to alter the same at pleasure;
- C. To sue and be sued in its corporate name;
- D. To make by-laws [bylaws] for the government and regulation of its affairs;

- E. To acquire, own, hold, sell, lease, pledge or mortgage any property incident to its purposes;
- F. To own and hold membership in and share capital of other associations and corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;
- G. To borrow money, contract debts and make contracts, including agreements of mutual aid or federation with other associations and other groups organized on a cooperative basis;
- H. To conduct its affairs without as well as within this state;
- I. To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent herewith;
- J. To exercise all powers not inconsistent herewith which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the forgoing enumeration of powers shall not be deemed exclusive." [§ 53-4-4 NMSA 1978].

NON-PROFIT CORPORATION ACT [53-8-1 NMSA 1978]

The purpose of the Non-Profit Corporations Act [§ 53-8-1 NMSA 1978] is stated, as follows:

"Corporations may be organized under the Non-Profit Corporation Act [Chapter 53, Article 8 NMSA 1978] for any lawful purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association."

The Non-Profit Corporations Act [§ 53-8-1 NMSA 1978] is similar to The Cooperative Associations Act [§ 53-4-4 NMSA 1978], but the General Powers [53-8-5 NMSA 1978] are broader allowing associations organized under this act to lend money, make donations, and pay pensions, as follows:

"[53-8-5 NMSA 1978] General Powers. 91975)

- G. Lend money to its directors, officers and employees and otherwise assist them; ... I. lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;...N. unless otherwise provided in the articles of incorporation, make donations for the public welfare or for charitable, scientific or educational purposes; and in times of war to make donations in aid of war activities;...O. pay pensions and establish pension plans, pension trusts, profit sharing plans and other incentive plans for any or all of its directors, officers and employees."

WATER AND SANITATION DISTRICTS AND THE WATER AND SANITATION DISTRICT ACT [73-21-1 NMSA 1978]

The declared purpose [73-21-1 NMSA 1978] is:

"It is hereby declared that the organization of water and sanitation districts, having the purposes and powers provided in this act, will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of said districts."

§ 73-21-3. Purpose of water and sanitation districts states the following.

"Water and sanitation districts may be created for the purpose of:

- A. Purchasing, acquiring, establishing or constructing waterworks to supply water for domestic, commercial and industrial purposes by any available means to persons within and without the boundaries of the district. For this purpose, any district has the power to extend its water lines outside the boundaries of the district for the purpose of securing a source of water supply or for the purpose of supplying the water to any lands of the United States, New Mexico or Indian reservations for use by any person, firm or corporation;
- B. Purchasing, acquiring, establishing or constructing sanitary sewers or a system of sewage disposal, garbage or refuse disposal;
- C. Purchasing, acquiring, establishing or constructing streets and street improvements, including without limitation grades, re-grades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curbs, gutters, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, artificial lights and lighting equipment, parkways, grade separators, traffic separators and traffic-control equipment and all appurtenances and incidentals or any combination of them, including real and other property for them;
- D. Establishing or constructing park and recreational improvements;
- E. Purchasing, acquiring, establishing, constructing or operating other public facilities or economic development projects; or
- F. All of the improvement in in Subsections A through E or this section or any combination of them within and without the district."

The General Powers of a Water and Sanitation District are enumerated in § 73-21-16 NMSA 1978 as follows.

- A. To have perpetual existence;
- B. To have and use a corporate seal;

- C. To sue and be sued and be a party to suits, actions, and proceedings;
- D. Except as otherwise provided in the Water and Sanitation District Act [73-21-1 NMSA 1978] to enter into contracts and agreements affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities. Except in cases in which a district will receive aid from a governmental agency, a notice shall be published for bids on all construction contracts for work or material or both involving an expense of five thousand dollars (\$5,000) or more. The district may reject any and all bids, and, if it appears that the district can perform the work or secure material for less than the lowest bid, it may proceed to do so;
- E. To borrow money and incur indebtedness and evidence the indebtedness by certificates, notes or debentures and to issue bonds in accordance with the provisions of that act;
- F. To acquire, dispose of and encumber real and personal property, water rights, water and sewer works and plants and any interest in them, including leases and easements;
- G. To refund any bonded indebtedness or revenue bonds of the district without an election in accordance with the provisions of that act;
- H. To have the management, control and supervision of all the business and affairs of the district and the construction, installation, operation and maintenance of district improvements;
- I. To hire and retain agents, employees, engineers, and attorneys;
- J. To have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by law for the condemnation of private property for public use, to take any property necessary to the exercise of the powers granted in that act, both within and without the district;
- K. To construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon or over any vacant public lands, which public lands are now or may become the property of the state, and to construct works and establish and maintain facilities across any stream of water or watercourse; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the street or highway in such manner as to completely or unnecessarily impair its usefulness;
- L. To fix and from time to time to increase or decrease water and sewer rates, tolls or charges for services or facilities furnished or made available by the district, including, without limiting the generality of the foregoing, standby charges for both water and sewers, and to pledge that revenue for the payment of any indebtedness of the district. Until paid, all rates, tolls or charges constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of New Mexico for the foreclosure of real estate mortgages. The board shall shut off or discontinue service for delinquencies in the payment of the rates, tolls or charges or in the payment of taxes levied pursuant to the Water and Sanitation District Act and prescribe and enforce rules and regulations for the connection with and disconnection from properties of the facilities of the

district. For health and sanitary purposes, the board may cause the connection to be made and lien to be filed against the property for the expense incurred in making the connection; provided, however, that no owner shall be compelled to connect his property with such system unless a service line is brought by the district to a point within four hundred feet of his dwelling place;

- M. To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district; and
- N. To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of that act."

§ 73-21-17 NMSA 1978 grants a Water and Sanitation District to levy and collect ad valorem taxes, as follows:

"In addition to the other means of providing revenue for such districts as herein provided, the board shall have power and authority to levy and collect ad valorem taxes on and against all taxable property within the district."

In addition, § 73-21-18 NMSA 1978 allows for a Water and Sanitation District to levy and collect taxes, as follows.

"To levy and collect taxes, the board shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of assessed valuation of taxable property within the district, and with other revenues will raise the amount required by the district annually, to supply funds for paying expenses of organization and costs of construction [constructing], operating, and maintaining the works and equipment of the district, and promptly to pay in full, when due, all interest on and principal of bonds and other obligations of the district, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in Section 73-21-19 NMSA 1978. The board shall, on or before October 1 of each year, certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed with directions that at the time and in the manner required by law for levying of taxes for county purposes, the board of county commissioners shall levy the tax upon [the] assessed valuation of all taxable property within the district, in addition to other taxes as may be levied by the board of county commissioners at the rate so fixed and determined."

In addition to the above-mentioned authority to levy and collect taxes, § 73-21-19 allows a Water and Sanitation District to levy taxes to cover defaults and deficiencies, as follows:

"The board in certifying annual levies as herein provided, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient punctually to pay the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, then the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid."

Finally, § 73-21-22 allows Water and Sanitation Districts to create a "sinking fund" as follows:

"Whenever any indebtedness has been incurred by a district, it shall be lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district, for maintenance and operating charges and depreciation, and provide extensions of the betterments to the improvements of the district."

Water and Sanitation Districts are subject to oversight by the local government division of the department of finance and administration, and may elect to be regulated by the Public Regulation Commission, as provided for in the Water and Sanitation District Act in the following sections.

"73-21-52. Duties of local government division. (1977)

The local government division of the department of finance and administration shall approve all budgets of water and sanitation districts and shall from time to time review fiscal policies of such districts and report to the legislature and the governor any actions or policies of the districts deemed to be in violation of the law or the best interest of the people of New Mexico. The district shall submit annually to the local government division its budget for approval in the manner required by regulation of the division. The district shall submit any other information or data concerning the operation of the district, as deemed necessary by the local government division. Violation of the provisions of this section by the

board of any water and sanitation district or any officer thereof shall be deemed cause for removal or suspension in the manner as provided by law for county officers."

"73-21-55. Districts not subject to utility laws; option to submit to regulation. (2009)

A. Any district organized under the provisions of the Water and Sanitation District Act may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the public regulation commission and to the terms and provisions of the Public Utility Act [62-13-1 NMSA 1978]; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to any district making such an election.

B. If the board has not elected to become subject to the jurisdiction of the public regulation commission:

(1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution, at which time, after hearing proponents and opponents, the board may reject, amend or adopt the resolution adjusting the rates, tolls, fees or charges;

(2) within thirty days after publication of the resolution adjusting rates, tolls, fees or charges, the new rates, tolls, fees or charges may be appealed by a taxpaying elector to the district court of the county in which the district is located; and

(3) the district court shall consider the petition to overturn the adjustments, based on the record of the board hearing in which the resolution was adopted, under the court's rules governing review by a district court of administrative decisions or orders.

C. If the board of any district located in a class A county with a population according to the 2000 federal decennial census of more than one hundred twenty-five thousand and less than one hundred thirty-five thousand has not elected to become subject to the jurisdiction of the public regulation commission:

(1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution;

(2) at the expense of the board, the board shall appoint a hearing officer to conduct the public hearing to be chosen from a list of hearing officers provided by

the commission, and shall engage a court reporter to record the hearing and produce a verbatim written record of the hearing;

(3) the board's hearing officer shall:

(a) hear proponents and opponents of the proposal;

(b) issue a decision rejecting, amending or adopting the resolution adjusting the rates, tolls, fees or charges; and

(c) within thirty days following the hearing, file the decision with the board;

(4) within seven days of receipt of the decision, the board shall mail a copy of the decision to each proponent and opponent who appeared at the hearing or who requested a written copy of the decision, and the board shall post the decision on the district's web site;

(5) the board shall pay all expenses of the public hearing and may charge a reasonable fee for production of copies of the record; provided that any citizen has the right to obtain a copy of the record on payment of the fee;

(6) within twenty days following the board's mailing of the decision of the hearing officer, the decision may be appealed to the board by a taxpaying elector;

(7) within thirty days of receipt of an appeal of the hearing officer's decision, the board shall, based on a review of the record of the first public hearing, reject, approve or amend the decision of the hearing officer and shall mail a copy of the board's decision within seven days to each proponent and opponent who appeared at the hearing or who requested a written copy of the decision, and the board shall post the decision on the district's web site;

(8) within thirty days following mailing of the board's decision, a taxpaying elector may appeal the decision of the board to the district court of the county in which the district is located; and

(9) the district court shall consider the petition to overturn the adjustments, based on the record certified by the court reporter of the public hearing and the decision of the board, under the court's rules governing review by a district court of administrative decisions or orders."

SPECIAL DISTRICTS PROCEDURES ACT

Chapter 4, Article 53 NMSA 1978 relates to Counties and Special District Procedures. The Special District Procedures Act [§ 4-53-1 NMSA 1978] is provided in its entirety beginning with the definition section because of its present importance in considering the formation of any special districts in the future.

4-53-2. Definitions. (1965)

As used in the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978]:

- A. "special district" means any single or multipurpose district organized or that may be organized as a local public body of this state for the purpose of constructing and furnishing any urban-oriented service which another political subdivision of the state is authorized to perform, including but not limited to the services of water for domestic, commercial or industrial uses, sewage, garbage, refuse collection and recreation, but excluding the functions or services of drainage, irrigation, reclamation, soil and water conservation or flood control;
- B. "county officer" means an elected county official or a member of the board of county commissioners;
- C. "city officer" means a mayor or a member of the governing authority of municipality; and
- D. "commission" means a county special district commission.

4-53-3. County special district commission. (1965)

A. There shall be created in each county of the state a "county special district commission" consisting of five members selected as follows:

- (1) two members appointed by the board of county commissioners, each of whom shall represent the county and shall be a county officer;
- (2) two members appointed by the mayors or chief executives of all municipalities within the county at a joint meeting, each of whom shall represent the municipalities and shall be a city officer; and
- (3) one member appointed by the other four members of the commission, who shall be chairman of the commission and shall represent the general public in the county. If within five days following their appointment, the four other members of the commission fail to appoint the fifth member of the commission, the district court of the county in which the commission is located shall appoint the fifth

member of the commission within ten days following the date of the appointment of the four other members of the commission.

B. The term of each member shall be four years and until the appointment and qualification of his successor, except that the term of each county officer and each city officer shall expire upon the termination of his county or city office. Any city or county member may be removed by his appointing authority.

C. Vacancies on the commission shall be filled for the unexpired term by the appointing authority which originally appointed the member whose position has become vacant. Commission members shall serve without compensation but shall be reimbursed the actual amounts for their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office, which amounts shall not exceed the amounts permitted for such purposes in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. Prior to establishment of a commission in a county, any proposals for the creation of a special district, or petition for the merger, consolidation or dissolution of an existing special district shall be submitted to the county clerk as otherwise provided in the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978]. Upon receipt of the proposal or petition the clerk shall immediately notify the board of county commissioners of the county and each of the governing authorities of all municipalities in the county of such receipt. The counties and municipalities shall then proceed to establish a commission.

4-53-4. Powers and duties of commission. (1965)

The commission may:

- A. review and approve, or disapprove with or without amendment, wholly, partially or conditionally, proposals to create special districts within the county;
- B. review and approve, or disapprove petitions for the dissolution, consolidation or merger of special districts within the county; and
- C. adopt standards and procedures consistent with the provisions of the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978] for the evaluation of proposals for the creation, dissolution, consolidation and merger of special districts.

4-53-5. Proposals for creation of special districts. (1965)

A. Any proposal for the creation of a special district shall be submitted to the commission prior to any election or court hearing provided in the law authorizing the creation of the special district by those parties authorized by law to initiate proceedings for the creation of a special district.

B. Upon receiving notice of a proposal to create a special district, the commission shall direct the county clerk to give notice of the proposal to create a special district to:

(1) each municipality within twenty miles of the territory of the proposed district;

(2) each special district with boundaries adjacent to the proposed boundaries of the proposed district and which is performing the same type of service that the proposed district would perform; and

(3) the board of county commissioners.

C. At the same time the commission shall cause to be published in a newspaper of general circulation in the county an announcement of its receipt of the proposal, and notice of intention to hold a public hearing on a proposal to create the proposed district, which hearing shall be held not less than twenty nor more than forty days from receipt of the notification of the proposal to create the special district.

4-53-6. Merger, consolidation or dissolution of special district. (1965)

A. Any municipality, county or special district may by resolution adopted by its governing body, petition the commission requesting the merger, dissolution or consolidation of any special district within the county. Merger or consolidation petitions shall include information as will permit the commission to evaluate the degree to which the proposed action will permit more effective and efficient performance of the service provided by the special district.

B. The resident property owners of any special district may petition the commission requesting the merger, dissolution or consolidation of any special district in which they reside. The petition shall be signed by at least twenty

percent of the property owners actually residing within the territory of the special district.

C. Upon receipt of a petition for the merger, dissolution or consolidation of a special district, the commission shall direct the county clerk to notify the governing authorities of each political subdivision specified in Subsection B of Section 5 [4-53-5 NMSA 1978], and the governing body of the special district which is the subject of the petition. At the same time the commission shall cause to be published an announcement of such petition and the hearing to be held thereon in the manner provided in Subsection C of Section 5.

4-53-7. Hearings. (1965)

At public hearings held pursuant to the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978], the commission shall hear any interested party having made a written request to be heard, and shall receive any reports on the proposal before it. The commission may make and enforce any rules and regulations as necessary for the orderly and fair hearing on the issues before it.

4-53-8. Factors to be considered. (1965)

A. Factors to be considered in the review of a proposal for creation, consolidation, merger or dissolution of a special district shall include but not be limited to:

- (1) population; population density; land area; land use; per capita assessed valuation; topography, natural boundaries and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas during the next ten years;
- (2) need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for such services and controls; probable effect of the proposed formation and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas; and the probable effect of the proposed action on the total tax and indebtedness burden upon the taxpayers of the area;
- (3) the effect of the proposed action, and of alternative actions, on adjacent areas, on mutual social and economic interests and on the local government structure of the county.

B. Any municipality, county or special district receiving notification of hearing to be held by the commission may:

(1) in the case of a petition for creation of a new special district indicate to the commission its willingness and ability to provide the service to be undertaken by the proposed district. The notification shall include references to appropriate statutory authority empowering the municipality, county or special district to assume responsibility for providing the service within the territory of the proposed district and shall include appropriate evidence of its financial ability to provide the services. It may also include reasons why it, rather than the proposed district, should provide the service.

(2) in the case of petition for the dissolution, consolidation or merger of a special district, submit to the commission its recommendations concerning such proposals. If the petition for dissolution, consolidation or merger is based upon a municipality, county or special district assuming the function undertaken by the subject special district, the notification shall include references to appropriate statutory authority empowering the municipality, county or special district to assume responsibility for providing the services with [within] the territory of the subject district and shall include appropriate evidence of its financial ability to provide the services. It may also include reasons why it, rather than the subject district, should provide the services.

4-53-9. Multi-county special districts. (1965)

In the event that the territory of any special district lies in two or more counties, proposals to create, or petitions to merge, consolidate or dissolve special districts shall be forwarded to commissions in each of the counties affected. The commissions shall within ten days agree upon a date and place for a joint public hearing and shall proceed jointly as otherwise directed by the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978], except that all time spans shall be measured from the date of the agreement.

4-53-10. Decisions of commission. (1965)

A. Upon conclusion of the hearing, the commission may take the matter under consideration and shall, within thirty days following conclusion of the hearing, present its decision. The commission may also adjourn a hearing from time to time, but not to exceed a total of thirty days.

B. If the commission approves the formation of the proposed special district, proceedings for its formation may be continued as otherwise provided by law. If the commission approves the proposed formation with modifications or conditions, further proceedings for the special district's formation may be continued only in compliance with such modifications or conditions. If the commission disapproves the formation of the proposed special district no further action shall be taken to create the special district and notice of intention to create such a district may not be presented to the commission for at least two years after the date of disapproval.

C. The commission may order the merger, dissolution or consolidation of a special district where the factors specified in Section 8 [4-53-8 NMSA 1978] indicate the action is appropriate and [it] finds:

(1) that a petitioning municipality, county or existing special district adjacent to the subject district can provide the service to the residents of the subject district more effectively and more economically; or

(2) where it finds that there is no longer a need for the service provided by a subject district.

D. Decisions approving proposals for the merger, consolidation or dissolution of a special district shall provide for the equitable disposition of the assets of the subject district, for the adequate protection of the legal rights of the employees of the special district and for adequate protection of the legal rights of creditors; provided that no provision of the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978] shall be construed as to relieve any bonded indebtedness of a merged, consolidated or dissolved special district which is subject to any tax levied upon property in the district.

4-53-11. Administration. (1965)

The usual and necessary operating expenses incurred by the commission shall be prorated among the municipalities in the county by an agreement between the county and such municipalities.

LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY [73-26-1 NMSA 1978]

In 2009, the New Mexico State Legislature created a special district in the creation of the Lower Rio Grande Public Water Works Authority [73-26-1 NMSA 1978]. The three-page statute is provided in its entirety below in order to describe the attributes of this special district.

"73-26-1. Lower Rio Grande public water works authority. (2009)

A. The "Lower Rio Grande public water works authority" is created. The authority is a political subdivision of the state and shall be an independent public body. The authority is composed of Berino mutual domestic water consumers and mutual sewage works association, Desert Sands mutual domestic water consumers association, La Mesa mutual domestic water consumers association, Mesquite mutual domestic water consumers and mutual sewage works association and Vado mutual domestic water consumers association, all serving unincorporated communities within Dona Ana county. The voting community membership of the five founding entities has approved by resolution the development of the authority.

B. The authority may adopt rules and resolutions, governance policies and procedures necessary to exercise the powers conferred pursuant to this section.

C. All functions, appropriations, money, records and equipment and all personal property and real property, including water rights, easements, permits and infrastructure, as well as all encumbrances, debts and liabilities pertaining to or owned by the founding entities shall be transferred to the authority.

D. The authority's service area shall consist of the founding entities' existing place of use on file with and approved by the state engineer and shall be filed in the public records of Dona Ana county. An application shall be filed with the state engineer to combine and commingle water rights and to combine the existing entities' place of use into the authority's service area. In the event that another entity elects to merge into the authority, the merger shall include the combining and commingling of water rights with the authority, and the authority's service area shall be amended to include that entity's place of use and shall be filed with the state engineer. The authority's initial service area and any subsequent amendments to its service area shall be designated in a plat filed in the public records of Dona Ana county.

E. The authority may provide for water and wastewater services, road improvements for the protection of the authority's infrastructure or renewable energy projects that are

integral to the operation and maintenance of the authority's facilities or any combination or parts thereof.

F. The authority shall exercise all powers allowed pursuant to law, including:

- (1) regulating, supervising and operating the authority's facilities;
- (2) establishing rates and imposing assessments, fees and charges and taking action necessary for the enforcement thereof;
- (3) assessing a standby charge for the privilege of connection into the authority's service at some date in the future if the property line is within three hundred feet of the authority's service lines and the property line is located within the boundaries of the authority. This section applies to new connections after the enactment of this act;
- (4) acquiring, from a willing seller only, holding and using water rights in an amount necessary to meet its reasonable needs not to exceed forty years pursuant to Section 72-1-9 NMSA 1978;
- (5) shutting off, after notice, unauthorized connections, illegal connections or a connection for which charges are delinquent in payment;
- (6) entering into contracts for services with private entities, the state, municipalities, counties and the federal government and other public bodies to further its public purposes;
- (7) entering into joint powers agreements with other governmental entities;
- (8) acquiring and disposing of real property, personal property and rights of way;
- (9) condemning property pursuant to the Eminent Domain Code [42A-1-1 NMSA 1978] as the last resort and only for the purposes of construction, maintenance and operations of the authority's infrastructure;
- (10) hiring and retaining agents, employees and consultants, as needed;
- (11) adopting and using a governmental seal;
- (12) placing a lien on property for unpaid assessments, charges and fees and enforcing the lien in a manner pursuant to law;
- (13) suing and being sued and being a party to suits, actions and proceedings; and
- (14) having and exercising all rights and powers necessary, incidental to or implied from the specific powers granted in this section.

G. As a political subdivision of the state and a member-owned community water system, the authority shall be subject to the:

- (1) applicable rules and regulations of the department of environment, and in its discretion the department may:
 - (a) conduct periodic reviews of the operation of the authority;
 - (b) require the authority to submit information to the department;

(c) upon department of environment discretion or upon a petition of twenty-five percent of the members of the authority, conduct an investigation as it deems necessary to ensure the authority's compliance with all applicable statutes, rules, regulations and reporting requirements; and

(d) after a hearing, set and collect rates and fees and use the same for the proper operation and management of the authority;

(2) applicable rules and regulations of the department of finance and administration, local government division and budget and finance bureau;

(3) Open Meetings Act [10-15-1.1 NMSA 1978];

(4) Inspection of Public Records Act [14-2-4 NMSA 1978];

(5) Audit Act [12-6-1 NMSA 1978];

(6) Procurement Code [13-1-28 NMSA 1978];

(7) Governmental Conduct Act [10-16-1 NMSA 1978];

(8) special election procedures pursuant to Chapter 1, Article 24 NMSA 1978;

(9) Chapter 72 NMSA 1978; and

(10) applicable rules and regulations of the state engineer.

H. The authority is a political subdivision of the state and a member-owned community water system and shall not be subject to the jurisdiction of the public regulation commission or the provisions of the Public Utility Act [62-3-1 NMSA 1978].

I. The authority may issue utility system revenue bonds and obligations for acquiring real and personal property needed for the utility system and for extending, enlarging, renovating, repairing or otherwise improving its facilities. The authority may issue revenue anticipation notes with maturities and terms to be approved by the board of directors of the authority. The authority may pledge irrevocably net revenues from the operation of the utility system for payment of the principal, premiums and interest on the bonds. The utility system revenue bonds:

(1) may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as the authority determines;

(2) may be subject to prior redemption at the authority's option at such time and upon such terms and conditions, with or without the payment of a premium, as determined by the authority;

(3) may mature at any time not exceeding forty years after the date of issuance;

(4) may be serial in form and maturity, may consist of one bond payable at one time or in installments or may be in another form as determined by the authority;

(5) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 NMSA 1978]; and

(6) may be sold at a public or negotiated sale.

J. The authority's board of directors may adopt a resolution declaring the necessity for the issuance of utility system revenue bonds or other obligations and may authorize the issuance of utility system revenue bonds or other obligations by an affirmative vote of a majority of all members of the authority's board of directors. Utility revenue bonds and the resolution authorizing their issuance shall be subject to voter approval with oversight from the department of finance and administration and the New Mexico finance authority. The bonds authorized by the authority and their income shall be exempt from taxation by the state and its political subdivisions.

K. Except for the purpose of refunding previous utility system revenue bond issues, the authority shall not sell utility system revenue bonds payable from pledged revenues after the expiration of three years from the date of the resolution authorizing their issuance. Any period of time during which a utility system revenue bond is in litigation shall not count toward the determination of the expiration date of that issue.

L. The authority shall be governed by a board of directors. The directors of the initial board shall consist of five directors representing each of the founding entities. The directors of the initial board shall serve until their successors are elected. After the terms of the initial directors are completed, the succeeding board of directors shall be elected by districts from a minimum of five and a maximum of seven electoral districts. Each director, at the time of election, shall reside within the electoral district of the authority from which that member is elected. The boundaries and the number of electoral districts shall be established by the initial board within two years of the creation of the authority. The board may in its governance document provide for redistricting upon any change in the authority's boundary. The elected board of directors shall serve staggered terms to be established in the governance document developed by the initial board. Elections shall be conducted in accordance with the special election procedures pursuant to Chapter 1, Article 24 NMSA 1978 and may be conducted by the Dona Ana county elections bureau.

M. As used in this section, "public water works authority" means a utility organized as a political subdivision of the state for the purposes of constructing infrastructure and furnishing water and wastewater services for domestic, commercial or industrial uses, road improvements for the protection of the authority's infrastructure and renewable energy projects; and entering into agreements with other entities for the provision of

other services, including but not limited to water conservation and reclamation, source water protection, drainage, flood control, solid waste, planning and zoning.

History: Laws 2009, ch. 100, § 1."

EASTERN NEW MEXICO WATER UTILITY AUTHORITY

[73-27-1 NMSA 1978]

The Eastern New Mexico Water Utility Authority [73-27-1 NMSA 1978] was created in 2010 by the New Mexico State Legislature. As a special district, the Eastern New Mexico Water Utility Authority (ENMWUA) was created coextensive with the boundaries of Curry and Roosevelt Counties for the benefit of the seven members of the authority, including Curry County, the City of Clovis, the City of Portales, the City of Texico, the Town of Melrose, the Town of Elida, and the Village of Grady. The ENMWUA has the following authority and powers.

"73-27-7. Authority; powers. (2010)

The authority is a body politic and corporate and a political subdivision of the state. The authority may:

- A. sue and be sued;
- B. enter into contracts;
- C. borrow money and issue revenue bonds;
- D. acquire, dispose of or encumber real and personal property and any interest in them, including leases, easements and water rights from a willing seller only;
- E. design, develop, construct, operate, maintain, purchase or contract for water systems and pipelines to connect systems and sources with the authority's customers;
- F. be allowed a water use planning period not to exceed forty years and may hold water rights based on a water development plan submitted to and approved by the state engineer the implementation of which shall not exceed forty years from the date of the application to change the place or purpose of use of an acquired water right;
- G. have and exercise the power of eminent domain for the limited purpose of this subsection, within the boundaries of the authority and in Quay county and in the manner provided by law for the condemnation of private property as the last resort for public use

with just compensation. The authority shall not acquire water rights through eminent domain. The authority shall not take any property unless it is necessary for rights of way and easements and for the use and placement of facilities and infrastructure elements, including pipelines, structures, pump stations and related appurtenances;

H. construct and maintain works and establish and maintain facilities across or along any public street or highway and through any vacant public lands that are the property of the state and construct works and establish and maintain facilities across any stream of water or watercourse, all in accordance with applicable state and federal permitting authority;

I. have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of the Eastern New Mexico Water Utility Authority Act; and

J. not have power or rights over any property, infrastructure or operations of a county or municipality that has the power to appoint a member to the board.

History: Laws 2010, ch. 39, § 7."

The ENMWUA is not subject to the jurisdiction of the Public Regulation Commission, except as follows:

"73-27-19. Public regulation commission and state engineer jurisdiction. (2010)

A. The authority is not subject to the jurisdiction of the public regulation commission or the terms and provisions of the Public Utility Act [62-13-1 NMSA 1978] except as provided in Subsection B of this section.

B. The authority may elect by resolution adopted by its board to become subject to the jurisdiction of the public regulation commission and to the terms and provisions of the Public Utility Act; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to the authority when making such an election.

C. The authority shall be subject to the rules and regulations of the state engineer and the applicable articles of Chapter 72 NMSA 1978.

History: Laws 2010, ch. 39, § 19."

Article 27 - Eastern New Mexico Water Utility Authority Section 73-27-2 - Findings and purpose. (2010)

Universal Citation: NM Stat § 73-27-2 (2013)

73-27-2. Findings and purpose. (2010)

A. The legislature finds that:

(1) consistent with the goals of the statewide water plan, water systems should be planned for and constructed on a regional basis, in that regional water systems are able to take advantage of economies of scale;

(2) the costs of designing, purchasing, constructing, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining regional water systems have increased to a level that local financial resources are inadequate to meet all of the costs and that federal funding is crucial to complete a large scale water supply project in eastern New Mexico; and

(3) a water utility authority is necessary in eastern New Mexico to provide an organized structure to work with state, local and federal agencies to complete a water delivery system from the Ute Reservoir to local governments.

B. The purposes of the Eastern New Mexico Water Utility Authority Act are:

(1) to create a water utility authority to develop and construct a water delivery system based on a funding formula whereby up to seventy-five percent of the overall capital cost of the system is to be paid for by the federal government, fifteen percent is to be paid for by the state of New Mexico and ten percent is to be paid for by the local governments that have the power to appoint members to the board of the authority; and

(2) to create an authority that will deliver water to the local governments within the boundaries of the authority but that will not compete with local governments for rights to deliver water to ultimate end-users.

History: Laws 2010, ch. 39, § 2.

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

2013 New Mexico Statutes

Chapter 72 - Water Law

Article 1 - Water Rights in General

Section 72-1-10 - Water utility authority; created; membership; administration of utility. (2005)

Universal Citation: NM Stat § 72-1-10 (2013)

72-1-10. Water utility authority; created; membership; administration of utility. (2005)

A. The "Albuquerque-Bernalillo county water utility authority" is created. The membership of the board of directors of the authority shall consist of seven members. The municipal members shall be the mayor and three city councilors appointed by the Albuquerque city council. The county members shall be three county commissioners appointed by the Bernalillo county board of county commissioners. A city councilor member shall designate another city councilor to serve in the member's absence. A county commissioner member shall designate another county commissioner to serve in the member's absence. The mayor shall designate the chief executive officer of the municipality, a city councilor or a county commissioner to serve in the mayor's absence. City councilors shall serve one-year terms at the city council president's discretion. County commissioners shall serve one-year terms at the county commission chairman's discretion. The authority is subject to the state Procurement Code and other applicable state laws. The authority is a public body politic and corporate, separate and apart from the city of Albuquerque and Bernalillo county. The authority is a political subdivision of the state.

B. The authority:

(1) shall set policy and regulate, supervise and administer the water and wastewater utility of Albuquerque and Bernalillo county, including the determination and imposition of rates for services;

(2) is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the authority to adopt procedural rules; and

(3) is authorized to use city or county procurement processes or to contract with the city or county to further its public and corporate purposes.

C. The authority may acquire, maintain, contract for, condemn or protect water and wastewater facilities. The city of Albuquerque and Bernalillo county may delegate any additional power or duty conferred by Sections 3-27-2 and 3-27-3 NMSA 1978 to the authority to exercise and administer.

D. In exercising its power to acquire, maintain, contract for or condemn water and wastewater facilities, the authority shall not act so as to physically isolate and make nonviable any portion of the water or wastewater facilities, within or outside of Bernalillo county.

E. The authority may adopt resolutions and rules necessary to exert the power conferred by this section.

F. For the purposes of acquiring, maintaining, contracting for, condemning or protecting water and wastewater facilities, the jurisdiction of the authority extends within and outside of the boundaries of Bernalillo county to the territory physically occupied by the water and wastewater facilities and to privately owned water and wastewater facilities interconnected to the utility system. The authority may:

(1) acquire, maintain, contract for or condemn facilities for the collection, treatment and disposal of wastewater;

(2) condemn private property for the construction, maintenance and operation of wastewater facilities; and

(3) acquire, maintain, contract for or condemn for use as part of the utility system privately owned water and wastewater facilities used for the collection, treatment and disposal of wastewater of the authority or its customers.

G. The authority is subject to:

(1) the limitations imposed by Section 72-1-9 NMSA 1978 regarding water rights obtained or water rights condemned pursuant to a water development plan;

(2) the provisions of the Eminent Domain Code [42A-1-1 NMSA 1978]; and

(3) the provisions of Chapter 72 NMSA 1978 regarding any change to the point of diversion or the place or purpose of use of any water right to any place selected by the authority in order to make the water available to the authority.

H. The authority is liable to the condemnee pursuant to the provisions of the Eminent Domain Code for the value of a water right as well as the market value of real property to which the water right is appurtenant if:

(1) the authority condemns water rights, either within or outside of the boundaries of Bernalillo county that are appurtenant to real property that has been in active agricultural operation; and

(2) the condemnation of the water right by the authority requires the permanent retirement from agricultural operation of some or all of the real property to which the water rights are appurtenant.

I. The authority is not subject to the jurisdiction of or approval from the public regulation commission. The authority is not subject to the provisions of the Public Utility Act [62-13-1 NMSA 1978]. The authority is granted a water use planning period not to exceed forty years as set forth in Section 72-1-9 NMSA 1978.

J. The city of Albuquerque or Bernalillo county may, by ordinance or resolution, grant the authority a franchise for the operation, construction and maintenance of the utility system and for the use and rental of rights of way in exchange for consideration.

K. The authority may issue utility system revenue bonds and obligations pursuant to the Public Securities Short-Term Interest Rate Act [6-18-1 NMSA 1978] for acquiring real and personal property needed for the utility system and for extending, enlarging, renovating, repairing or otherwise improving water facilities and wastewater facilities or for any combination of these purposes. The authority may issue revenue anticipation notes with maturities not exceeding thirteen months upon terms approved by the board of directors. The authority may pledge irrevocably net revenues from the operation of the utility system for payment of the principal, premiums and interest on the revenue bonds or other obligations. It is unlawful to divert, use or expend money received from the issuance of utility system revenue bonds for any purpose other than the purpose for which the utility system revenue bonds were issued. Obligations, including bond

anticipation notes, issued pursuant to the Public Securities Short-Term Interest Rate Act shall be sold pursuant to the terms of that act. Utility system revenue bonds:

(1) may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as the authority determines;

(2) may be subject to prior redemption at the authority's option at such time and upon such terms and conditions with or without the payment of a premium as determined by the authority;

(3) may mature at any time not exceeding fifty years after the date of issuance;

(4) may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in another form as determined by the authority;

(5) shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 NMSA 1978]; and

(6) may be sold at a public or negotiated sale.

L. The bonds authorized by the authority and their income shall be exempt from all taxation by the state or its political subdivisions.

M. The members of the board of directors of the authority may adopt a resolution declaring the necessity for the issuance of utility system revenue bonds or other obligations and may authorize the issuance of utility system revenue bonds or other obligations by an affirmative vote of a majority of all members of the board of directors of the authority. Utility revenue bonds and the resolution authorizing their issuance shall not be subject to the approval of the public regulation commission pursuant to Section 3-23-3 NMSA 1978 or subject to voter approval pursuant to Section 3-23-2 NMSA 1978.

N. Except for the purpose of refunding previous utility system revenue bond issues, the authority may not sell utility system revenue bonds payable from pledged revenues after the expiration of three years from the date of the resolution authorizing their issuance. Any period of time during which a utility system revenue bond is in litigation shall not count toward the determination of the expiration date of that issue.

History: Laws 2003, ch. 437, § 1; 2005, ch. 345, § 1.

DRAFT LEGISLATION FOR WATER AND WASTEWATER AUTHORITY STATUTE

During the mid-1990's representatives from New Mexico State agencies and non-government organizations conducted meetings to develop amendments to the Water and Sanitation District Act and also draft model legislation for the formation of a water and wastewater authority. The goal was to attempt to improve an existing statute and also create draft legislation as a template that if introduced in the New Mexico State Legislature and ultimately passed, could provide a pathway for entities to create a regional authority without the need for individual site-specific legislation that would create a Special District. In other words, like the Sanitary Projects Act or the Water and Sanitation District Act, a single enabling statute could be used by entities to create a water and wastewater authority. The collaborative process for developing a draft statute was led by The Utton Transboundary Resources Center, University of New Mexico, School of Law. The Utton Center website has the following project description under a heading of special projects (See: <http://uttoncenter.unm.edu/projects/>)

"The Utton Center, working under contract with the Office of the State Engineer and with a management team of other state agencies, developed draft legislation for the 2007 legislative session that would facilitate the creation of regional water and waste water authorities. This project was carried out in response to House Joint Memorial 86 (2005), and the related report, Criteria for Water System Planning, Performance, and Conservation as a Condition for State Funding. The House Joint Memorial requested that "the State Engineer collaborate with the Department of the Environment and other agencies to develop criteria for water system planning, performance, and conservation as a condition of funding." The goals of the Report included protection of public health, economic vitality, and development of sustainable water service for all New Mexicans. Two drafts were developed in response to these initiatives:

Draft #1: Amendments to the Water and Sanitation District Act, which would clarify existing language to make formation of a District easier and allow for additional authority for water and waste water systems operating under this Act. (PDF document)

Draft #2: New legislation that would allow for the formation of a regional water and waste water authority. Unlike the Water and Sanitation District Act, this legislation would provide for formation of an entity only for the purposes of providing water and waste water service. (PDF document)

Comments were solicited on this website. All comments were reviewed and every effort was made to address issues and incorporate concerns and recommendations received by early December 2006. However, legislation was not introduced during the 2007 legislative session."

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

RESOLUTION No 2014 - _____

A RESOLUTION ENDORSING THE CONCEPT OF REGIONALIZATION OF WATER AND
WASTEWATER SERVICES FOR AND WITHIN SANTA FE COUNTY

WHEREAS, the Board of County Commissioners seeks to establish and maintain a sustainable long-term water supply capable of meeting the County's present and future needs; and

WHEREAS, the County's *Sustainable Growth Management Plan* identifies regional water planning and centralized water and wastewater service provision as "keys to sustainability;" and

WHEREAS, the *Santa Fe County Conjunctive Management Plan for the Santa Fe Basin* calls for "regional cooperation and coordination" of all water stakeholders; and

WHEREAS, the *Jemez y Sangre Regional Water Plan* accepted by the New Mexico Interstate Stream Commission in 2003, which covers Santa Fe County north of the Ortiz Mountains, recommends the "establishment of a regional water authority to better manage water resources;" and

WHEREAS, the *Estancia Basin Water Plan* accepted by the New Mexico Interstate Stream Commission in 1999, which covers the southern portion of the County to include Stanley and Edgewood, recommends the "establishment of a single-focus water resource Basin-wide entity with authority, necessary funding, and a long-term approach;" and

WHEREAS, since 2003 at least three Water and Wastewater Authorities have been created by the New Mexico State Legislature so as ensure public health and develop comprehensive water systems utilizing economies of scale, efficiency, and cost-effective water utility management on a regional scale; and

WHEREAS, numerous water service providers currently contend for customers in the Santa Fe metropolitan area; and

WHEREAS, it is in the interest of all residents of Santa Fe County to address water issues, including utility water service, source of supply, and water reuse, in a sustainable regional manner; and

WHEREAS, the County's Water Policy Advisory Committee recommended that the BCC endorse and pursue the concept of regionalization;

NOW, THEREFORE BE IT RESOLVED by the Board of the County Commissioners:

1. The Board of County Commissioners (BCC) endorses the concept of regionalization of water and wastewater service providers in order to improve for such providers their

economies of scale and long-term sustainability, and to increase their technical, managerial, and financial capacity to construct, operate, and maintain a water or wastewater utility.

2. The BCC urges the City of Santa Fe and other legal entities that provide water and wastewater services within the Santa Fe greater metropolitan area, to mutually determine their level of interest and ultimate benefits in pursuing the Water and Wastewater Authority concept to operate and maintain water and wastewater utilities in Santa Fe County within a site-specific area in the vicinity of the City of Santa Fe.
3. The BCC asks all water and wastewater service providers in Santa Fe County to seriously consider the merits of a regional Water and Wastewater Authority approach in meeting water supply and/or wastewater collection and treatment objectives.
4. The BCC encourages the State Legislature to support and adopt singular enabling legislation to allow for the streamlined, transparent, and effective establishment of regional water and wastewater authorities throughout the State.

APPROVED, ADOPTED AND PASSED this ____ day of ____, 2014.

BOARD OF COUNTY COMMISSIONERS

Daniel W. Mayfield, Chairman

Attest:

Geraldine Salazar, County Clerk

Approved as to Form:

Greg S. Shaffer, County Attorney

DISCUSSION DRAFT

AN ACT

**RELATING TO SPECIAL DISTRICTS; PROVIDING FOR THE CREATION
OF A REGIONAL UTILITY AUTHORITY; ESTABLISHING POWERS AND
DUTIES; ENACTING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW
MEXICO:**

Section 1. SHORT TITLE.--This act may be cited as the "Regional Utility
Authority Act".

Section 2. PURPOSE OF REGIONAL UTILITY AUTHORITY.--A
regional utility authority may be created for the purpose of:

- A. purchasing, acquiring, operating, establishing or constructing
waterworks to supply and treat water for domestic, commercial and industrial purposes
by any available means to persons within and without the boundary of the authority;
- B. purchasing, acquiring, establishing, operating or constructing
wastewater systems for the collection, treatment and disposal of sewage, or for the

1 management of decentralized or on-site wastewater disposal systems; or

2 C. planning, developing, managing, maintaining or coordinating the
3 development of regional water and wastewater facilities; and

4 D. infrastructure development of renewable energy projects that are
5 integral to the operation and maintenance of the authority's facilities or any
6 combination or parts thereof.

7
8 **Section 3. DEFINITIONS.--** As used in this Act:

9 A. "authority" means a regional water and wastewater authority that is
10 established pursuant to the Regional Utility Authority Act; and

11 B. "board" means the board of directors of an authority.

12 C. "service area" is a legal description of the boundaries of the
13 authority or the territory to be included in it, with such certainty as to enable a property
14 owner to determine whether or not his property is within the authority.

15
16 **Section 4. REGIONAL UTILITY AUTHORITY--CREATION.--**

17 Whenever the officers of an entity organized under any of the following statutes:

- 18 1. 73-21-1 NMSA 1978 (Water and Sanitation District)
- 19 2. 3-28-1 NMSA 1978 (Water and Natural Gas Association)
- 20 3. 73-5-1 NMSA 1978 (Water Users' Association)
- 21 4. 53-8-1 NMSA 1978 (Nonprofit Corporation)
- 22 5. 5-11-1 NMSA 1978 (Public Improvement District)
- 23 6. 62-2-1 NMSA 1978 (Investor-owned Waterworks)
- 24 7. 53-11-1 NMSA 1978 (Investor-owned Utility)
- 25 8. 53-4-1 NMSA 1978 (Cooperative Association)
- 26 9. 3-29-1 NMSA 1978 (Mutual Domestic Community Water
27 Association)

1
2 or other such corporate entity that provides water and/or wastewater service desire to
3 organize into a regional authority under this chapter, shall file an application for
4 incorporation as an authority with the Secretary of State. The officers of the entity or
5 the entities shall designate a lead entity to create and submit the application and
6 otherwise serve as the registered agent. The application shall consist of the following:

7
8 **A. Resolution of intent.**—The entity(es) shall individually adopt a
9 resolution signifying their intention to incorporate. No such resolution shall be adopted
10 until after a public meeting has been held, the notice of which shall be given at least 30
11 days before the meeting and in the same manner as provided in subsection (B) for the
12 giving of notice of the adoption of the resolution. The resolution shall state:

- 13 1. Name and purpose of authority.
- 14 2. Service area of the authority.
- 15 3. Member entities of authority
- 16 4. Lead entity of the authority to act as registered agent

17
18 **B. General notice of adopted resolution.**--If the resolution is adopted, the
19 officers of such entity(es) shall cause a notice of such resolution to be published at
20 least one time in the legal periodical of the county or counties in which the authority is
21 to be organized and at least one time in a newspaper published and in general
22 circulation in such county or counties. The notice shall contain a brief statement of the
23 substance of the resolution, including the substance of the articles making reference to
24 this chapter. The notice shall state that on a day certain, not less than three days after
25 publication of the notice, articles of incorporation of the proposed authority shall be
26 filed with the Secretary of State. No entity shall be required to make any other
27 publication of the resolution under the provisions of existing law.
28

1 **C. Filing articles of incorporation.**--On or before the day specified in the
2 notice required under Section I.B, the registered agent shall file with the Secretary of
3 State articles of incorporation. The articles of incorporation shall set forth:

- 4
- 5 1. The name of the authority;
- 6 2. A statement that the authority is formed under this chapter;
- 7 3. Purpose of the authority;
- 8 4. Adopted resolutions and proof of publication of the notices
9 required under Section B;
- 10 5. The names of the incorporating entities together with the names
11 and addresses of their officers;
- 12 6. an accurate map or plat that shows the boundary of the service
13 area proposed to be incorporated;
- 14 7. Name and officers of the registered agent and a statement
15 executed by an authorized officer of an entity in which the
16 officer acknowledges the entity's acceptance of the appointment
17 by the filing association as its registered agent;
- 18 8. Establishment and organization of the board in which all
19 legislative power of the authority is vested;
- 20 9. Manner of the appointment, term of service and qualifications, if
21 any, of the directors and the procedure for filling vacancies;
- 22 10. Officers of the authority, the manner of their appointment and
23 their duties; voting requirements for action by the board;
- 24 11. A merger plan for the transfer, disposition or assumption of all
25 assets and liabilities to the authority; and
- 26 12. Any other matter which shall be determined in accordance with
27 the provisions of this chapter.

28

29 **D. Certification of incorporation.**—Within 30 days of filing, the
30 Secretary of State shall review the articles of incorporation and if he finds that they

1 conform to law, he shall, but not prior to the day specified in the notice published in
2 accordance with Section I.B, open the articles of incorporation to public review and
3 comment for 30 days. If, upon closure of the public comment period, the Secretary of
4 State finds within those comments no valid objection or protest, he shall endorse his
5 approval of the articles and, when all proper fees and charges have been paid, shall file
6 the articles and issue a certificate of incorporation to which shall be attached a copy of
7 the approved articles. Upon the issuance of a certificate of incorporation by the
8 Secretary of State, the corporate existence of the authority shall begin. The certificate
9 of incorporation shall be conclusive evidence of the fact that the authority has been
10 incorporated, but proceedings may be instituted by State to dissolve an authority which
11 was formed without substantial compliance with the provisions of this section.
12

13 **E. Certification of officers.**--When an authority has been organized and
14 its officers elected, its secretary shall certify to the Secretary of State the names and
15 addresses of its officers as well as the principal office of the authority. Any change in
16 the location of the principal office shall likewise be certified to the Secretary of State
17 within ten days after such change. An authority created under the laws of State and
18 existing at the time this chapter is enacted, in addition to powers granted or conferred
19 upon the authority, shall possess all the powers provided under this chapter.
20

21 **F. Qualified electors.** – The founding entities will define in their articles
22 of incorporation their composition (qualified elector or membership based).
23

24 **G. Board of directors** --The regional entity shall be governed by a board
25 of directors. The board shall be made up of an odd number of at least three directors
26 who should reside within the boundaries of the authority and are in good standing.
27

28 **H. Entities Joining Later**—If any entity as described in Section 4 elects to
29 join a duly incorporated authority, the entity shall individually adopt a resolution
30 signifying its intention to join and submit such resolution to the officers of the

1 authority. No such resolution shall be adopted until after a public meeting has been
2 held, the notice of which shall be given at least 30 days before the meeting and in the
3 same manner as provided in subsection 4.B for the giving of notice of the adoption of
4 the resolution. The resolution shall state:

- 5 1. The entity's intention to join the authority under this chapter;
- 6 2. The name and purpose of the authority;
- 7 3. Statement that the entity accepts the articles of incorporation of
8 the Authority;
- 9 4. An accurate plat or map showing any amendment to the
10 authority's service area, if any, occasioned by the joining of the
11 entity;
- 12 5. A plan of dissolution, if applicable, of the entity after joining the
13 authority; and
- 14 6. A merger plan for the transfer and assumption of all assets and
15 liabilities to the authority.

16 Once the authority receives the resolution, it shall update its articles of incorporation
17 and file such updated articles with the Secretary of State. Within 30 days of filing, the
18 Secretary of State shall review the updated articles of incorporation and if he finds that
19 they conform to law, he shall, but not prior to the day specified in the notice published
20 in accordance with Section I.B, open the articles of incorporation to public review and
21 comment for 30 days. If, upon closure of the public comment period, the Secretary of
22 State finds within those comments no valid objection or protest, the Secretary shall
23 endorse his approval of the articles.

24 Board representation of the newly joined entity will occur through election or
25 redistricting process. The authority board may choose to appoint a representative of
26 the newly merged entity on advisory role in the meantime.

1 **Section 5. POWERS AND RESPONSIBILITIES OF AN AUTHORITY.--**

2 An authority is a body politic and corporate, and a political subdivision of the state,
3 subject to all statutory requirements thereof. An authority may exercise all legislative
4 powers and perform all functions not expressly denied by general law or by this
5 Regional Water and Wastewater Authority Act. In addition to other powers granted to
6 the authority pursuant to the Regional Water and Wastewater Authority Act, the
7 authority shall:

8 A. have perpetual existence;

9 B. borrow money, receive grants, issue bonds in accordance with the
10 provisions of this act and pledge or otherwise encumber the revenues or
11 receipts of the authority or mortgage the property of the authority as security for
12 any of the obligations of the authority;

13 C. regulate, supervise and operate the authority's facilities;

14 D. establish rates and impose assessments, fees and charges and take
15 action necessary for the enforcement thereof, for the delivery of and collection
16 of water and wastewater services or for other services or facilities operated or
17 made available by the authority in accordance with a rate analysis compliant
18 with the authority's financial plan and asset management plan which provides
19 for reserve funds for future improvements and replacement of the authority's
20 infrastructure.

21 E. assess a standby charge for the privilege of connection into the
22 authority's service at some date in the future if the property line is within three
23 hundred feet of the authority's service lines and the property line is located
24 within the boundaries of the authority. This section applies to new connections
25 after the effective date of this act;

26 F. acquire, from a willing seller only, hold and use water rights in an
27 amount necessary to meet its reasonable needs not to exceed forty years

1 pursuant to Section 72-1-9 NMSA 1978;

2 G. shut off, after notice, unauthorized and illegal connections or
3 connections for which charges, fees, assessments or other charges are
4 delinquent, and file suit in a court of competent jurisdiction to recover costs
5 associated with an unauthorized, illegal or delinquent connection, including the
6 cost of water delivered, charges for connection and disconnection, damages and
7 attorney's fees;

8 H. enter into contracts for services with private entities, the state,
9 municipalities, counties and the federal government and other public bodies to
10 further its public purposes;

11 I. enter into joint powers agreements with other governmental entities;

12 J. acquire and dispose of real property, personal property and rights of
13 way;

14 K. condemn property pursuant to the Eminent Domain Code as the last
15 resort and only for the purposes of construction, maintenance and operations of
16 the authority's infrastructure;

17 L. hire and retain agents, employees and consultants, as needed;

18 M. adopt and utilize a governmental seal;

19 N. place a lien on property for unpaid assessments, charges and fees and
20 enforce the lien in the manner pursuant to this section until paid, all rates, tolls
21 or charges constitute a perpetual lien on and against the property served, and
22 any such lien may be foreclosed in the same manner as provided by the laws of
23 New Mexico for the foreclosure of real estate mortgages and shall not be
24 subject to any limitations period, statutory or otherwise;

25 O. sue and be sued and be a party to suits, actions and proceedings;

26 P. develop, adopt, amend and file with the Secretary of State a
27 governance document where it establishes the authority powers and its process

1 to implement them;

2 Q. refund any bonded indebtedness or revenue bonds of the authority;

3 R. undertake regional water planning, alone or in coordination with

4 other regional water and/or wastewater service providers, including water plans

5 as set forth in 72-1-9 NMSA 1978;

6 S. wherever applicable, promulgate an on-site wastewater management

7 plan. For health and sanitary purposes, the board shall have the power to

8 compel compliance with regulations and standards, no less stringent than those

9 adopted by the department of the environment, relating to design, installation,

10 maintenance, repair and removal of on-site wastewater treatment systems;

11 T. construct ,establish and maintain facilities across or along any public

12 street or highway and through any vacant public lands which are the property of

13 the state; construct works and establish and maintain facilities across any

14 stream of water or watercourse; all in accordance with applicable state and

15 federal permitting authority;

16 U. for health and sanitary purposes, the authority shall have the power

17 to compel the owners of inhabited property within the territory of an authority

18 to connect their property with the water or wastewater system of the authority,

19 and, upon failure so to connect within ninety days after written notice by the

20 board, the board may cause the connection to be made and a lien to be filed

21 against the property for the expense incurred in making the connection;

22 provided, however, that no owner shall be compelled to connect the owner's

23 property with such system unless a service line is brought by the authority to a

24 point within four hundred feet of the nearest lot line; and to compel the

25 connection of any new development that lies partially or wholly within the

26 service area of the authority to the authority's water or wastewater system

27 pursuant to the authority's existing line extension policy; and the power to

1 prohibit the owners of the owners of inhabited property within the territory of
2 an authority and who are connected to the authority to disconnect from the
3 authority.

4 V. have and exercise all rights and powers necessary or incidental to or
5 implied from the specific powers granted in this section. Such specific powers
6 shall not be considered as a limitation upon any power necessary or appropriate
7 to carry out the purposes and intent of the Regional Utility Authority Act.

8 W. enforce liens on property in the following manner:

9 1. If the authority places a lien on property for nonpayment of
10 money owed, the authority shall file in the office of the county clerk a
11 notice of lien that shall include:

12 (a) identification of the outstanding debt to the authority;

13 (b) the fact that a lien is established;

14 (c) the general purpose of the lien;

15 (d) the name of the owner of the property against which
16 the lien is established as determined from the records of the
17 county assessor;

18 (e) a description of the property against which the lien is
19 established;

20 (f) the amount of the lien; and

21 (g) if the lien is for more than one period of time, the
22 date for which the lien is established.

23 2. A lien for multiple charges or assessments on a property
24 owner may be included in the same notice of lien, and it shall not be
25 necessary to file separate liens against the separate properties. The lien
26 shall be attested in the name of the authority. The principal amount of
27 any lien imposed for a charge or assessment shall bear interest at the

1 rate of twelve percent per year from the date of filing the notice of lien
2 unless otherwise provided by law.

3 3. After the filing of the notice of lien in the office of the county
4 clerk, the authority shall have a lien upon the property described in the
5 notice of lien. The filing of the notice of lien shall be notice to all the
6 world of the existence of the lien and of the contents of the notice of
7 lien. No such lien shall affect the title or rights to or in any real estate,
8 of any purchaser, mortgagee in good faith or judgment lien creditor,
9 without knowledge of the existence of such lien, unless the notice of
10 lien is filed in accordance with this section in the office of the county
11 clerk of the county in which the real estate is situated. All authority
12 liens shall be first and prior liens on the property subject only to the lien
13 of general state and county taxes. The authority may release a lien
14 against any specific property by:

15 (a) entering and signing a receipt of payment upon the
16 notice of lien filed in the office of the county clerk; or

17 (b) issuing a separate receipt that recites that payment of
18 the lien with any accrued interest and penalty has been made.

19 4. The authority may, in a single suit, foreclose the liens against
20 all persons named in the notice of liens or against the property if the
21 owners are unknown. The complaint filed by the authority in the third
22 judicial district court shall:

23 (a) expressly name each defendant, if known;

24 (b) describe the property against which the lien is
25 established; and

26 (c) set forth the amount of the lien.

27 5. The judgment or decree rendered in said cause shall be

1 several against the named defendants and against the several properties
2 for the amounts decreed to be due by each. A lien against real estate
3 may be foreclosed in the same manner that mortgages or other liens
4 against real estate are foreclosed with like rights of redemption. At the
5 trial of any case foreclosing any lien, the recitals of the lien or other
6 evidence of indebtedness shall be received in evidence as prima facie
7 true. In the foreclosure of any lien created by the authority, reasonable
8 attorney fees shall be taxed by the court as part of the costs.

9 6. The authority shall prepare and sign a notice of foreclosure,
10 which will also bear the signature and mailing address of an attorney
11 representing the authority. The proceeds of the sale of the property by
12 the authority pursuant to a foreclosure sale on a lien shall be applied as
13 follows:

14 (a) first, to the payment of costs in giving notice of the
15 sale and of conducting the sale;

16 (b) second, to the indebtedness claimed under the lien
17 and thence to ad valorem taxes and other special assessments
18 having a lien of the property that are coequal with the lien; and

19 (c) third, after all such costs, liens, assessments and taxes
20 are paid, to the former owner, mortgage holder or other parties
21 having an interest in the tract or parcel, upon such person
22 providing satisfactory proof to the court of such interest and
23 upon approval of the court.

24 X. In order to prevent waste and to conserve the supply of water, the authority may by
25 ordinance regulate and restrict the use of water.

26
27 Y. All powers and restriction granted to municipalities by NMSA 3-53-1.1 regarding
28 domestic wells within the territory of the authority
29

1 Z. For the purpose of preserving and protecting water resources and to provide an
2 assured water supply for the community, the authority may require within its territory:
3 1. site development standards to conserve water and minimize water loss;
4 2. water harvesting and storage;
5 3. low water use landscaping and plant materials;
6 4. nonagricultural residential and commercial water use limitations; or
7 5. recycling and reuse of water.
8 6. The provisions of this section shall be implemented consistent with state
9 engineer rules.

10
11
12 **Section 6. Oversight Powers --** The authority shall be subject to the:

- 13 1. applicable rules and regulations of the department of the
14 environment, and in its discretion the department may:
15 (a). conduct periodic reviews of the operations of the
16 authority;
17 (b) require the authority to submit information to the
18 department; :
19 (c) upon department of environment discretion or upon a
20 petition of twenty-five (25) percent of the customers of
21 the authority, conduct an investigation as it deems
22 necessary to ensure the authority's compliance with all
23 applicable statutes, rules, regulations and reporting
24 requirements.
- 25 2. applicable rules and regulations of the department of finance and
26 administration, local government division and budget and
27 finance bureau;
- 28 A. Whenever the above agencies determine a violation, they
29 may:
30 (a) Issue a compliance order requiring compliance
31 immediately or within a specific time period, or both;

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or

(b) Commence a civil action in district court for appropriate relief, including injunctive relief.

B. A compliance order shall state with reasonable specificity the nature of the violation.

C. If the authority fails to take corrective actions within the time specified in the compliance order, the departments may assess a civil penalty for each day of continued noncompliance with the compliance order.

D. Any compliance order issued by the department pursuant to this section shall become final unless specified, no later than thirty days after the compliance order is served, any authority named in the compliance order submits a written request to the departments for public hearing within ninety days after receipt of a request.

E. The departments may appoint an independent hearing officer to preside over any public hearing held. The hearing officer shall:

- a) Make and preserve a complete record of the proceedings; and
- b) Forward to the departments a report that includes recommendations, if recommendations are requested by the departments.

E. The departments shall consider the findings of the independent hearing officer and, based on the evidence presented at the hearing, the departments shall make a final decision regarding the compliance order.

1 F. In connection with any proceeding under this section, the
2 departments may:

- 3 (a) adopt rules for discovery and hearing procedures; and
4 (b) issue subpoenas for the attendance and testimony of
5 witnesses and for relevant paper, books and documents.

6 G. Penalties collected pursuant to this section shall be deposited
7 in the general fund.

- 8 3. Open Meetings Act;
9 4. Inspection of Public Records Act;
10 5. Audit Act
11 6. Procurement Code
12 7. Governmental Conduct Act; and
13 8. applicable rules and regulations of the state engineer.
14

15 **Section 7. REGIONAL UTILITY AUTHORITY--TERRITORY AND**
16 **EXCLUSIVE RIGHT TO PROVIDE SERVICE--JOINING AN AUTHORITY--**
17 **COOPERATION WITH ADJOINING COUNTIES**

18 A. A regional utility authority shall have the exclusive right to provide
19 water and wastewater services within its service area; provided that:

20 I. any entity providing water or wastewater services as of the
21 effective date of the Act to customers or members within the authority's service
22 area may continue to serve such customers served as of that date, and

23 2. any extension of water or wastewater service by an entity
24 described in subsection 1 of this section, that is planned and fully funded as of
25 the date that the authority is created, and is completed within eighteen months
26 of the same date, shall likewise be excluded from the authority's service area.

27 B. Areas annexed by a municipality after the effective date of this Act,

1 which are within the service area of an authority, shall remain part of the authority's
2 service area.

3 **Section 8. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF**
4 **REVENUES--LIMITATION ON TIME OF ISSUANCE.--**

5 A. Revenue bonds may be issued by the authority for acquiring real and
6 personal property needed for an authority project, including the purchase of water
7 rights, for constructing, extending, enlarging, bettering, repairing or otherwise
8 improving a water or wastewater project or for any combination of those purposes.

9 The authority may pledge irrevocably any or all of the net revenues from the operation
10 of the water or wastewater system for payment of the interest on and principal of the
11 revenue bonds.

12 B. Except for the purpose of refunding previous revenue bond issues,
13 the authority may not sell revenue bonds payable from pledged revenues after the
14 expiration of two years from the date of the resolution authorizing the issuance of the
15 bonds. However, any period of time during which a particular revenue bond issue is in
16 litigation shall not be counted in determining the expiration date of that issue.

17 C. The authority shall not impair the rights of any holders of bonds or
18 other obligations payable from the net revenues of the water or wastewater system
19 previously issued or incurred by the authority.

20 D. If required by the terms, covenants and provisions of revenue bonds
21 or other obligations previously issued by the authority, all additional bonds or other
22 obligations issued or incurred by the authority pursuant to the Regional Water and
23 Wastewater Authority Act shall contain any required terms, covenants or provisions
24 required to avoid impairment of the previously issued or incurred bonds or other
25 obligations.

26 **Section 9. USE OF PROCEEDS OF REVENUE BOND ISSUE.--**It is
27 unlawful to divert, use or expend any money received from the issuance of revenue

bonds for any purpose other than the purpose for which the revenue bonds were issued.

Section 10. REVENUE BONDS--TERMS.--Revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the authority;

B. may be subject to prior redemption at the authority's option at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as may be determined by the authority;

C. may mature at any time or times not exceeding forty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the authority;

E. shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or negotiated sale.

Section 11. EXEMPTION FROM TAXATION.--The bonds authorized by the Regional Water and Wastewater Authority Act and the income from the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

Section 12. RESOLUTION AUTHORIZING REVENUE BONDS.--

A. At a regular or special meeting called for the purpose of issuing revenue bonds, the authority may adopt a resolution that:

(1) declares the necessity for issuing revenue bonds; and

(2) authorizes the issuance of revenue bonds by an affirmative vote of a majority of all members of the authority.

B. Revenue bonds and the resolution authorizing their issuance shall be

1 subject to approval by the state board of finance.

2 **Section 13. REVENUE BONDS NOT GENERAL OBLIGATIONS--**
3 **AUTHENTICATION.--**

4 A. Revenue bonds or refunding revenue bonds issued as authorized in
5 the Regional Water and Wastewater Authority Act are:

6 (1) not general obligations of the state or other political
7 subdivision of the state; and

8 (2) collectible only from the pledged revenues of the water or
9 wastewater system, and each bond shall state that it is payable solely from the pledged
10 revenues of the water or wastewater system and that the bondholders may not look to
11 any other fund of the state or political subdivision of the state for the payment of the
12 interest and principal of the bond.

13 B. The bonds shall be executed by the chairperson of the board and
14 may be authenticated by the secretary of the board or any public or private transfer
15 agent or registrar or its successor, which shall be named or otherwise designated by the
16 board. The bonds may be executed as provided under the Uniform Facsimile Signature
17 of Public Officials Act.

18 **Section 14. REVENUE BONDS--MANDATORY RATES FOR THE**
19 **WATER OR WASTEWATER SYSTEM--MANDAMUS--IMPAIRMENT OF**
20 **PAYMENT.--**

21 A. The authority shall establish rates for services rendered by the water
22 or wastewater system to provide revenue sufficient to meet the following requirements,
23 and such rates shall remain in effect until the bond issue is liquidated. Revenue shall
24 be sufficient to:

25 (1) pay all reasonable expenses of operation of the water or
26 wastewater system;

27 (2) pay all interest on the water or wastewater system revenue

1 bonds as it comes due; and

2 (3) provide a sinking fund adequate to discharge the revenue
3 bonds as they mature.

4 (4) establish a reserve fund necessary for the operation and
5 improvements of the authority to include:

6 a. capital improvement reserve;

7 b. operating and maintenance reserve;

8 c. emergency reserve;

9 d. debt reserve; and

10 e other reserves as identified.

11 B. In the event the authority fails or refuses to establish rates for the
12 water or wastewater system as required in this section, any bondholder may apply to
13 the district court for a mandatory order requiring the authority to establish rates that
14 will provide revenues adequate to meet the requirements of this section.

15 C. Any law that authorizes the pledge of any or all of the pledged water
16 or wastewater system revenues to the payment of any revenue bonds issued pursuant to
17 the Regional Water and Wastewater Authority Act or that affects the pledged revenues
18 of the water or wastewater system, or any law supplemental to or otherwise
19 appertaining to that act, shall not be repealed or amended or otherwise directly or
20 indirectly modified in such a manner as to impair adversely any such outstanding
21 revenue bonds, unless the outstanding revenue bonds have been discharged in full or
22 provision has been fully made for payment of the bonds.

23 **Section 15. REVENUE BONDS--REFUNDING AUTHORIZATION.--**

24 A. The authority may issue refunding revenue bonds for the purpose of
25 refinancing, paying and discharging all or any part of outstanding bonds or other
26 obligations payable from the net revenues of the water or wastewater system
27 previously issued or incurred by the authority.

1 B. The authority may pledge irrevocably for the payment of interest and
2 principal on refunding bonds the pledged revenues of the water or wastewater system.

3 C. Bonds for refunding and bonds for any purpose permitted by the
4 Regional Water and Wastewater Authority Act may be issued separately or issued in
5 combination in one series or more.

6 **Section 16. REFUNDING BONDS--ESCROW--DETAIL.--**

7 A. Refunding bonds issued pursuant to the Regional Water and
8 Wastewater Authority Act shall be authorized by resolution. Any bonds that are
9 refunded pursuant to the provisions of this section shall be paid at maturity or on any
10 permitted prior redemption date in the amounts, at the times and places and, if called
11 prior to maturity, in accordance with any applicable notice provisions, all as provided
12 in the proceedings authorizing the issuance of the refunded bonds or otherwise
13 appertaining to the bonds, except for any such bond that is voluntarily surrendered for
14 exchange or payment by the holder or owner.

15 B. Provision shall be made for paying the bonds refunded at the time or
16 times provided in Subsection A of this section. The principal amount of the refunding
17 bonds may exceed the principal amount of the refunded bonds and may also be less
18 than or the same as the principal amount of the bonds being refunded so long as
19 provision is duly and sufficiently made for the payment of the refunded bonds.

20 C. The proceeds of refunding bonds, including any accrued interest and
21 premium appertaining to the sale of refunding bonds, shall either be immediately
22 applied to the retirement of the bonds being refunded or be placed in escrow in a
23 commercial bank or trust company, which possesses and is exercising trust powers and
24 which is a member of the federal deposit insurance corporation, to be applied to the
25 payment of the principal of, interest on and any prior redemption premium due in
26 connection with the bonds being refunded; provided that such refunding bond
27 proceeds, including any accrued interest and any premium appertaining to a sale of

1 refunding bonds, may be applied to the establishment and maintenance of a reserve
2 fund and to the payment of expenses incidental to the refunding and the issuance of the
3 refunding bonds, the interest on the bonds and the principal of the bonds or both
4 interest and principal as the authority may determine. Nothing in this section requires
5 the establishment of an escrow if the refunded bonds become due and payable within
6 one year from the date of the refunding bonds and if the amounts necessary to retire the
7 refunded bonds within that time are deposited with the paying agent for the refunded
8 bonds. Any such escrow shall not necessarily be limited to proceeds of refunding
9 bonds but may include other money available for its purpose. Any proceeds in escrow
10 pending such use may be invested or reinvested in bills, certificates of indebtedness,
11 notes or bonds that are direct obligations of or the principal and interest of which
12 obligations are unconditionally guaranteed by the United States of America or in
13 certificates of deposit of banks that are members of the federal deposit insurance
14 corporation, the par value of which certificates of deposit is collateralized by a pledge
15 of obligations of or the payment of which is unconditionally guaranteed by the United
16 States of America, the par value of which obligations is at least seventy-five percent of
17 the par value of the certificates of deposit. Such proceeds and investments in escrow
18 together with any interest or other income to be derived from any such investment shall
19 be in an amount at all times sufficient as to principal, interest, any prior redemption
20 premium due and any charges of the escrow agent payable therefrom to pay the bonds
21 being refunded as they become due at their respective maturities or due at any
22 designated prior redemption date or dates in connection with which the authority shall
23 exercise a prior redemption option. Any purchaser of any refunding bond is in no
24 manner responsible for the application of the proceeds thereof by the authority or any
25 of its officers, agents or employees.

26 D. Refunding bonds may bear such additional terms and provisions as
27 may be determined by the authority and the refunding bonds are not subject to the

1 provisions of any other statute except as may be incorporated by reference in the
2 Regional Water and Wastewater Authority Act.

3 **Section 17. REFUNDING REVENUE BONDS--TERMS.--**Refunding
4 revenue bonds:

5 A. may have interest, appreciated principal value or any part thereof
6 payable at intervals or at maturity as may be determined by the authority;

7 B. may be subject to prior redemption at the authority's option at such
8 time or times and upon such terms and conditions with or without the payment of
9 premium or premiums as may be determined by the authority;

10 C. may mature at any time or times not exceeding forty years after the
11 date of issuance;

12 D. may be serial in form and maturity or may consist of a single bond
13 payable in one or more installments or may be in such other form as may be
14 determined by the authority; and

15 E. shall be exchanged for the bonds and any matured unpaid interest
16 being refunded at not less than par or sold at public or negotiated sale at, above or
17 below par and at a price that results in a net effective interest rate that does not exceed
18 the maximum permitted by the Public Securities Act.

19 **Section 18. REFUNDING REVENUE BONDS--RESOLUTION.--**At any
20 regular or special meeting called for the purpose of issuing refunding revenue bonds,
21 the board by a majority vote of all the customers of the authority may adopt a
22 resolution authorizing the issuance of the refunding revenue bonds.

23 **Section 19. GOVERNANCE DOCUMENT AMENDMENTS**

24 A. Amendments to the governance document shall be made during a
25 regular meeting held in accordance with the provisions the Open Meetings Act by a
26 vote of the majority of the board. The amended governance document shall be filed
27 and recorded and certified by the Secretary of State. The amended governance

documents of the authority shall become effective upon filing with the commission and supersede any and all amendments.

SECTION 20 AUTHORITIES INCORPORATED UNDER SPECIAL ACT; LAWS APPLICABLE -- Any authority incorporated or by special act previous the date of this statute which chooses to retain such organization and governance, shall, in the enforcement of the powers or the exercise of the duties conferred by the special act, proceed in all respects as provided by the special act.

SECTION 21. AUTHORITIES INCORPORATED UNDER SPECIAL ACT; PETITION FOR REORGANIZATION; ELECTION -- Any municipality incorporated under a special act may abandon its organization and organize itself under the provisions of the general law relating to municipalities.

A. If a petition, signed by qualified electors of the authority equal in number to not less than one eighth of the total number of qualified electors of the authority, requests the governing body to submit to the qualified authority electors the question of reorganizing the authority under the provisions of the this statute, the governing body shall, within fourteen days after the petition is certified as valid, adopt an election resolution calling for a special election in the manner provided in the authority's special act on the question of reorganizing the authority under the provisions of this statute. The election shall be held within sixty days after the date the election resolution is adopted.

B. The petition shall describe the boundary of the authority as it would exist if the authority incorporated by special act is reorganized under this statute. The qualified electors, residing within the boundary of the authority as it would exist if the authority incorporated by special act is reorganized, may vote in the election authorized in this section.

C. Authorities incorporated under special act; special election; ballot.

1 At the special election on the question of reorganizing an authority incorporated under
2 a special act under this statute, the ballot shall read substantially as follows:

3 "For authority reorganization under this statute []

4 Against authority reorganization under this []. "

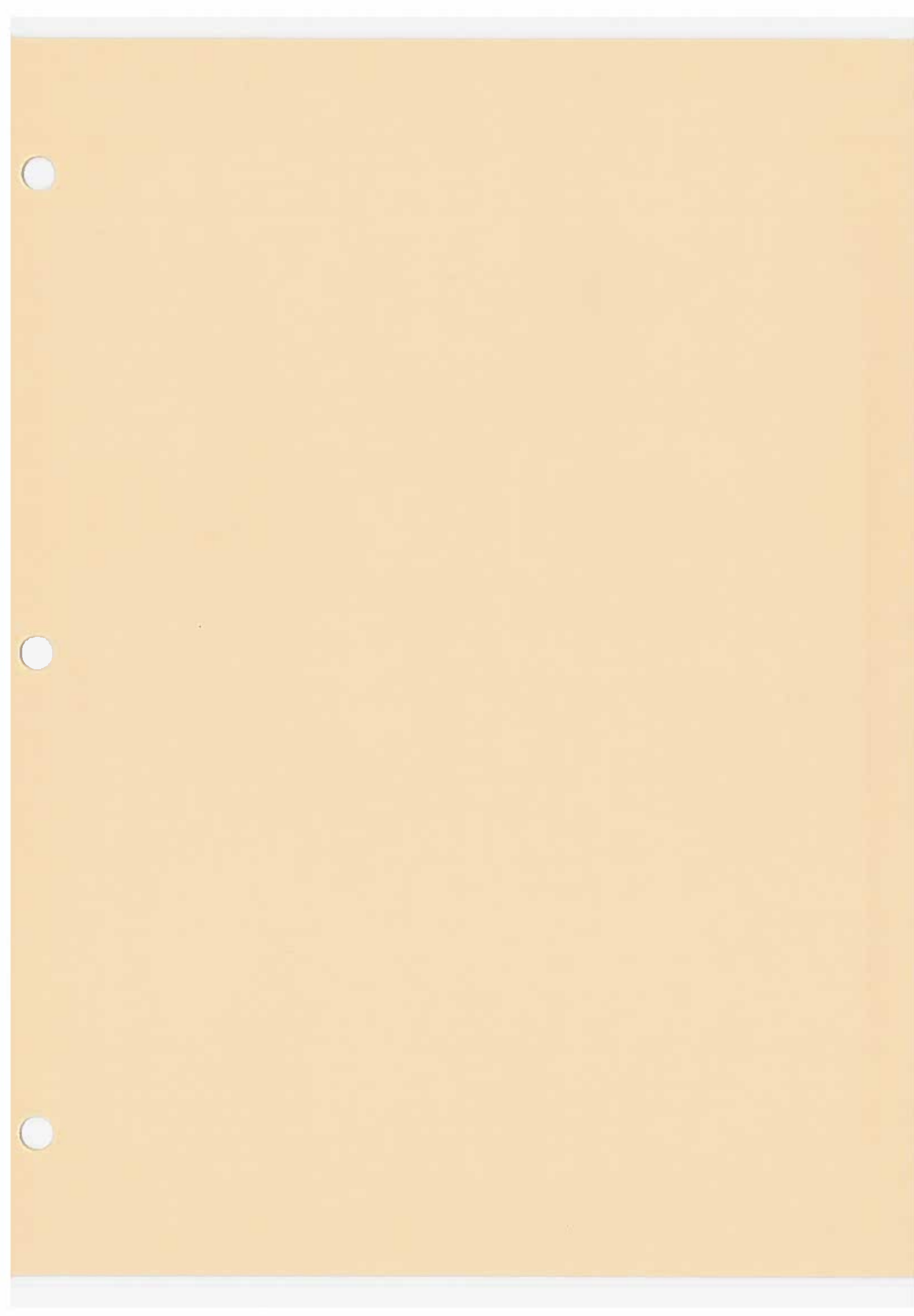
5 D. Authorities incorporated under special act; reorganization approved;
6 election for new officers; term of office.

7 1. If a majority of the votes cast on the question of reorganizing a authority
8 incorporated by a special act favor reorganizing the authority under this statute, the
9 governing body shall, within fourteen days after the results of the election reorganizing
10 the authority under this statute have been canvassed and certified, adopt an election
11 resolution calling for the development and adoption of a governance document and
12 election of directors to establish the reorganized authority. The authority shall continue
13 to operate under its special act until election shall be called, conducted and canvassed
14 in the manner provided in its special act.

15 2. The terms of office for one-half of the members of the governing body shall
16 be until the next regular authority election. The terms of office for the remaining one-
17 half of the governing body shall be until the second regular authority election is held.
18 The elected authority officers shall continue in office until their successors are elected
19 and qualified. The length of terms of the first members shall be determined by lot.

20

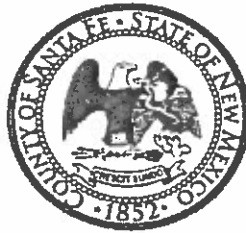
21 Section 22. EFFECTIVE DATE.—The effective date of the provisions of this
22 act is July 1, 2016.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: August 13, 2014

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager *BT*

VIA: Katherine Miller, County Manager
Jeff Trujillo, ASD Director
Penny Ellis-Green, Growth Management Director *PEG*

ITEM AND ISSUE: *BCC Meeting August 26, 2014*

REQUEST BOARD OF COUNTY COMMISSIONERS TO AUTHORIZE THE COUNTY MANAGER TO SIGN PURCHASING DOCUMENTS FOR THE COMPLETION OF THE 2014 SANTA FE COUNTY TERRAIN MAPPING AND ORTHOPHOTOGRAPHY PROJECT.
(Bill Taylor, Purchasing/Penny Ellis-Green, Growth Management)

Issue:

Santa Fe County entered into a Professional Services Agreement with Bohannon-Huston, Inc. for a countywide Terrain Mapping and Orthophotography Project on February 28, 2014 utilizing FY2014 budget authority approved by the Board. It is now necessary to encumber approved FY2015 funding in order to complete this project.

Background:

Santa Fe County uses orthophotography and terrain data to support County business functions including real property assessment, terrain management, County land development compliance, project and infrastructure planning, and land use and community planning activity. The County terrain data has not been systematically updated since 2001 and the most recent orthophotographs of Santa Fe County were completed in 2008. Updating this data/information/photography will support the production of accurate and high resolution orthophotographs for the next 10-15 years.

On February 25, 2014 the Board authorized a Waiver from Section 1 of Ordinance 2012-6 to purchase Professional IT Services utilizing an existing State Price Agreement with Bohannon-Huston, Inc for the Terrain Mapping and Orthophotography Project. FY2014 funding in the amount of \$600,000.00 was encumbered to acquire raw photography and LiDAR data and to begin preliminary data processing tasks needed to create final deliverables. FY2015 funding in the amount of \$600,000.00 of County funds, a \$100,000 USGS Cooperative Grant, and \$100,000 in municipal cooperator funds are available to complete the project. Estimated total project costs will not exceed 1.4 million dollars (\$1.2 million of County funds). Authorizing the County Manager to execute relevant purchasing documents will facilitate completion of this project.

Recommendation:

The Purchasing Division and Growth Management Department recommends that the Board of County Commissioners authorizes the County Manager to execute purchasing documents for Terrain Mapping and Orthophotography Project services for total project costs not to exceed \$1,400,000.00.



State of New Mexico
General Services Department
Purchasing Division

GSD/PD (Rev. 01/11)

Statewide Price Agreement Amendment

Awarded Vendor
0000046346
Bohannon Huston
7500 Jefferson NE, Courtyard 1
Albuquerque, NM 87109

Telephone No. (505) 823-1000

Price Agreement Number: 10-000-00-00051 BS

Price Agreement Amendment No.: THREE

Term: July 1, 2011 – March 31, 2015

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Procurement Specialist: Teri Arevalo TA

Telephone No.: (505) 827-0266

Invoices:

As Requested

Title: IT Professional Services

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions and by mutual agreement of all parties, this Price Agreement is extended from March 30, 2014 to March 31, 2015, at the same price, terms and conditions.

The provisions of the Price Agreement shall remain in full force and effect, except as modified by this amendment.

Accepted for the State of New Mexico


New Mexico State Purchasing Agency

Date: 2/3/14



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor
0000046346
Bohannon Huston
7500 Jefferson NE, Courtyard 1
Albuquerque, NM 87109

Telephone No. (505) 823-1000

Price Agreement Number: 10-000-00-00051BS

Price Agreement Amendment No.: Two

Term: July 1, 2011 – March 30, 2014

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law.

Procurement Specialist: India Garcia

Telephone No.: (505) 827-0483

Invoice:
As Requested

Title: IT Professional Services

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from June 1, 2013 to March 30, 2014 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 2/18/13

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

AM



State of New Mexico
General Services Department
Purchasing Division

GSD/PD (Rev. 01/11)

Statewide Price Agreement Amendment

Awarded Vendor
0000046346
Bohannon Huston
7500 Jefferson NE, Courtyard 1
Albuquerque, NM 87109

Telephone No. (505) 823-1000

Price Agreement Number: 10-000-00-00051BS

Price Agreement Amendment No.: One

Term: July 1, 2011 - May 31, 2013

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law.

Procurement Specialist: Gerrie Becker

Telephone No.: (505) 476-3121

Invoice:
As Requested

Title: IT Professional Services

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from March 31, 2012 to May 31, 2013 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 01/17/12

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

AM
2-12
Wm



GSD/PD (Rev. 01/11)

State of New Mexico
General Services Department
Statewide Price Agreement

Awarded Vendor

0000046346

Bohannon Huston

7500 Jefferson NE Courtyard 1

Albuquerque, NM 87109

Telephone No. 505-823-1000

Price Agreement Number: 10-000-00-00051BS

Payment Terms: Per Contract

F.O.B.: Per Contract

Delivery: Per Contract

Ship To:

All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Procurement Specialist: Gerrie Becker

Telephone No.: 505-476-3121

Invoice:

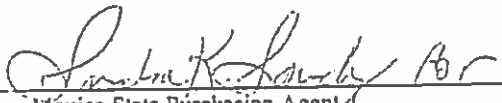
As Requested

Title: IT Professional Services

Term: July 1, 2011 thru March 30, 2012

This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 6/30/11

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

10/11

State of New Mexico
Information Technology

Price Agreement

Price Agreement No. 10-000-00-00051BS

THIS Information Technology Price Agreement ("Agreement") is made by and between the State of New Mexico, State Purchasing Division, hereinafter referred to as the "Agency" and Bohannon Huston, Inc., hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq.*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Agency has selected the Contractor as the Offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of this Agreement, the Contractor's proposal, including any best and final offers, and the RFP are hereby incorporated by reference in this contract. In the event of a conflict between these items, the conflict will be resolved by giving priority in the following order:

1. All federal and New Mexico laws, rules and regulations regarding services within the Contractor's scope of work.
2. This Agreement and any written amendments to this Agreement.
3. The Request for Proposal (RFP), all RFP amendments, written clarifications to the RFP, and written answers to written questions concerning the RFP.
4. Contractor's Best and Final Offer
5. Contractor's Proposal.

ARTICLE 1 - DEFINITIONS

- A. "Acceptance" shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative ("Executive Level Representative") of the Agency.
- B. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work.
- C. "Chief Information Officer ("CIO")" shall mean the Secretary of the Department of Information Technology for the State of New Mexico or designated representative.
- D. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- E. "DoIT" shall mean the Department of Information Technology.
- F. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- G. "Escrow" shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.

H. "Enhancement" means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an Error Correction. After conferring with Agency, an Enhancement may be identified as minor or major.

I. "Know How" shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

J. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

K. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a project and the project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Agency.

L. "Payment Invoice" shall mean a detailed, certified and written request for payment of services rendered from the Contractor to the Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.

M. "Performance Bond" shall mean a surety bond which guarantees that the contractor will fully perform the contract and guarantees against breach of contract.

N. "Project" shall mean a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT.

O. "Project Manager" shall mean a qualified person from the Agency responsible for all aspects of the Project

P. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

Q. "State Purchasing Agent (SPA)" - shall mean the State Purchasing Agent for the State of New Mexico or designated representative.

R. "State Purchasing Division (SPD)" - shall mean the State Purchasing Division of the General Services Department for the State of New Mexico

ARTICLE 2 - SCOPE OF WORK

A. Scope of Work. The Contractor shall provide information technology services to the Procuring Agency in accordance with the completed IT Professional Services Contract and the terms and conditions of the price agreement at the rate shown in Exhibit A.

B. Performance Measures. In addition, each IT Professional Services Contract will become a part of the agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

- 1) The terms and conditions of this document;
- 2) The completed Contract/Purchase Order;
- 3) The request for proposals document; and
- 4) The contractor's written proposal including the Best and Final Offer, if one was submitted.

C. This is not an exclusive Price Agreement. Procuring Agencies may obtain services from other sources during the Price Agreement term. The SPA makes no expressed or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of services will be procured.

ARTICLE 3 - COMPENSATION

All payments under this Price Agreement are subject to the following provisions:

a. Acceptance - In accordance with Section 13-1-158 NMSA 1978, Project Manager shall determine if the services provided meet Purchase Order specifications contained therein. No payment shall be made for any service until the services have been accepted in writing by the Project Manager. Unless otherwise agreed upon between Procuring Agency and the Contractor, within fifteen (15) days from the date the Project Manager receives written notice (Contractor's Invoice) from the Contractor that payment is requested for services, the Project Manager shall issue a written certification to the Contractor of complete or partial acceptance or rejection of the services.

b. Rejection - Unless the Executive Level Representative gives notice of rejection within the fifteen (15) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The

Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Agency may terminate this Agreement.

c. Compensation - The approved maximum rates to be paid for services rendered are contained in the Services Schedule. The Procuring Agency may reimburse Contractor for reasonable travel/per diem expenses for work performed at distances greater than 100 miles from the Contractor's primary place of business in New Mexico. The conditions for travel, the type and amount expenses to be reimbursed shall be stated in the Procuring Agency Agreement. Travel time from the Contractor's primary place of business and the worksite is not billable.

d. Payment of Invoice - Payment will be made to the Contractor's designated mailing address.

e. Payment of Taxes - The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes or local option taxes for services rendered. Such taxes must be itemized separately on the invoice.

The payment of taxes for any money received under this Price Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

f. Invoices - Invoices shall be submitted to the Project Manager.

g. Facilities and Equipment - The Procuring Agency shall provide contractor personnel with reasonable office work space and facilities including access to a local telephone service, copy machine usage and office supplies. Unless otherwise stated in the Procuring Agency Agreement, the contractor shall provide contractor personnel with any required personal computer equipment and software and shall reimburse the procuring agencies for all long distance telephone calls charged to the Procuring Agency.

h. Appropriations - The terms of this Price Agreement and any Purchase Orders are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico or other appropriate governing bodies for performance pursuant to this Price Agreement. Notwithstanding any language to the contrary in this Price Agreement or in any Purchase Order or other document, a Procuring Agency may terminate its obligation under a Purchase Order, or any extension thereof, if sufficient appropriations and authorization are not made by the Legislature or other appropriate governing body to pay amounts due. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding. However, Procuring Agencies agree not to use insufficient appropriations as a means of terminating a Purchase Order in order to acquire functionally equivalent services from a third party.

i. Release - The Contractor, upon final payment of the amount due under a Purchase Order, releases the State of New Mexico, and its agencies and public employees, from all liabilities, claims and obligations whatsoever arising from or under this Price Agreement. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 4 - TERM

The initial term of this Price Agreement shall be March 31, 2011 or as soon as possible thereafter, through March 30, 2012.

The SPA may extend the initial term of the Price Agreement for three (3) additional one-year terms, or portions thereof, by giving the Contractor a written offer to renew the agreement at least thirty (30) days prior to the expiration of the then-current term. Service rates can change each year at the time of renewal if exercised, any proposed increase in the maximum rates for each authorized service shall not exceed the lower of the increase in the published Consumer Price Index (or other index approved by the Agreement Administrator) during the previous agreement term or the percentage increase in the Contractor's published consultant rates.

Except as noted elsewhere in this paragraph, the SPA expects all terms and conditions of this Price Agreement to apply to any option temps exercised. No changes to terms and conditions shall be effective unless reduced to written amendment in accordance with Paragraph 15 of this Price Agreement.

ARTICLE 5 – TERMINATION

This Agreement may be terminated as follows:

- A. General. By either Party upon written notice to be delivered to the other party not less than thirty (30) business days prior to the intended date of termination.
- C. Obligations and Waiver. By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 6 – TERMINATION MANAGEMENT

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
- 1.) Transfer, deliver, and/or make readily available to the Agency property in which the Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Agency.
 - 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Agency;
 - 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Agency may direct, for orderly completion and transition;
 - 4.) Take such action as the Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
 - 5.) Agree that the Agency is not liable for any costs arising out of termination and that the Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
 - 6.) Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Agency programs;
 - 7.) In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Agency the full amount of the reduction.

8.) Should this Agreement terminate due to the Contractor's default, the Contractor shall reimburse the Agency for all costs arising from hiring new contractor/subcontractors at potentially higher rates and for other costs incurred.

9.) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall assist and cooperate with the Agency in the orderly and timely transfer of files, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Agency or created by the Contractor under this Agreement, to the Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Project Manager, the Contractor shall provide to the Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Agency or created by the Contractor under this Agreement.

B. Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Agency shall 1) Retain ownership of all work products and documentation created pursuant to this Agreement; and 2) Pay the Contractor all amounts due for services Accepted prior to the effective date of such termination or expiration.

ARTICLE 7 - INDEMNIFICATION

A. General. The Contractor shall defend, indemnify and hold harmless the Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) days after it receives notice thereof, notify, by certified mail, the legal counsel of the Agency, and the Risk Management Division of the New Mexico General Services Department.

B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Agency, as necessary, to satisfy any outstanding claim that the Agency may have against the Contractor.

ARTICLE 8 - INTELLECTUAL PROPERTY

A. Product of Services: Copyright. All materials developed or acquired by the Contractor under this Price Agreement shall become the property of the Procuring Agency. Nothing produced, in whole or in part, by the Contractor under this Price Agreement shall be the subject of an application for copyright by or on behalf of the Contractor. The original and one copy of all materials, work papers, design documents, or other documents produced by the Contractor shall be indexed and placed in appropriately labeled binders and delivered to the Project Manager at the conclusion of a Purchase Order.

ARTICLE 9 - INTELLECTUAL PROPERTY INDEMNIFICATION

A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Agency based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Agency shall:

- 1.) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
- 2.) Allow the Contractor to control the defense and settlement of the claim; and
- 3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

- 1.) Provide the Agency the right to continue using the product or service and fully indemnify the Agency against all claims that may arise out of the Agency's use of the product or service;
- 2.) Replace or modify the product or service so that it becomes non-infringing; or
- 3.) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Agency to the extent such modification is the cause of the claim.

ARTICLE 10 - WARRANTIES

NA

ARTICLE 11 - CONTRACTOR PERSONNEL

A. Approval of Contractor Personnel

Personnel proposed in the Contractor's written proposal to the Procuring Agency are considered material to any work performed under this Price Agreement.

a. Once a Purchase Order has been issued, no changes of personnel will be made by the Contractor without prior written consent of the Procuring Agency. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.

b. The Procuring Agency shall retain the right to request the removal of any of the Contractor's personnel at any time.

ARTICLE 12 - STATUS OF CONTRACTOR

A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Agency.

ARTICLE 13- CHANGE MANAGEMENT

A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:

- 1) Deliverable requirements;
- 2) Compensation due under the terms of this Agreement; or
- 3) Due Date of any Deliverable.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria: 1) The Project Manager shall draft a written Change Request for Executive Level Representative review and approval to include: the name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change, and 2) The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) working days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change requests, once approved, become a part of the contract and become binding as a part of the original contract.

ARTICLE 14 - DEFAULT/BREACH

In case of default and/or breach by the Contractor, for any reason whatsoever, the Agency and the State of New Mexico may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect

damages, consequential damages, special damages and the Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 15 - EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Agency irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the Agency, and the Contractor consents to the Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 16 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor's site or the Agency's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the Agency or for losses occasioned by the Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 17 - ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 18 - SUBCONTRACTING

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Agency.

ARTICLE 19 - RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 20 - CONFIDENTIALITY

Any confidential information provided to the contractor by the agency or, developed by the Contractor based on information provided by the agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the Agency will result in direct, special and incidental damages.

ARTICLE 21 - CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 22 - RECORDS AND AUDIT

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during this Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, CIO, SPA, and DFA. The Agency shall have the right to audit billings both before and after payment. Payment for services under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

ARTICLE 23 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 24 - NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenw.mexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 25 - MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 26 - NOTIFICATION

Either party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery, or three (3) business days after being mailed.

To SPA:

State Purchasing Agent
Purchasing Division
Joseph M. Montoya State Building, Room 2016

1100 St. Francis Drive
Santa Fe, New Mexico 87505

To Contractor: Bohannon Huston, Inc.
7500 Jefferson Street NE
Albuquerque, NM 87109

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 26. The carrier for mail delivery and notices shall be the agent of the sender.

ARTICLE 27- GENERAL PROVISIONS

- A. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- B. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations; and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
- C. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.
- D. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Agency's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.
- E. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
- F. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

G. Work Site. Work shall be performed at the Procuring Agency's site unless specified otherwise in the Procuring Agency Agreement.

H. Succession. This Price Agreement shall extend to and be binding upon the successors and assigns of the parties.

ARTICLE 28 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 29 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 30- AGREEMENT ADMINISTRATOR

The SPA shall appoint an agreement administrator whose duties shall include, but not be limited to, the following:

- a. The agreement administrator shall attempt to facilitate dispute resolution between the Contractor and procuring agencies. Unresolved disputes shall be presented to the SPA for resolution.
- b. The agreement administrator shall review and recommend approval or disapproval of all requested changes to the Contractor's Services Schedule.
- c. The agreement administrator shall advise the SPA regarding the Contractor's performance under the terms and conditions of the agreement.
- d. The agreement administrator shall assist procuring agencies with the preparation of purchase orders and the approval thereof.
- e. The agreement administrator shall review and accept quarterly utilization reports.

ARTICLE 31 - ADMINISTRATIVE REPORTING FEES

a. The contractor agrees to provide periodic price agreement utilization reports to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31

September 30 October 31
December 31 January 31
March 31 April 30

b. The periodic report shall include the gross revenues for the period subtotaled by Procuring Agency name. If no revenue was generated for the period, a report shall be filed stating that fact. Reports containing revenue shall be accompanied with a check payable to SPA for an amount equal to one-half of one percent (0.0050) of the gross revenue for the period.

c. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of the Price Agreement or termination of the Price Agreement for cause.

ARTICLE 32 – EMPLOYEE PAY EQUITY REPORTING

"Contractor agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) either within thirty (30) calendar days of contract award (if the contract did not result from a solicitation) or on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration (if the contract did result from a solicitation).

"For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the required form-annually within thirty (30) calendar days of the annual contract anniversary date of the initial submittal date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

"Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

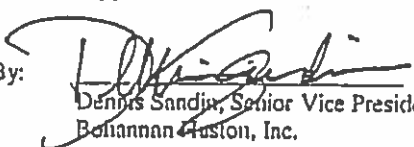
"Contractor also agrees to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

"Contractor shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order."

ARTICLE 33 - FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By:  Date: June 14, 2011
Dennis Sandia, Senior Vice President
Bollmann & Austin, Inc.

By:  Date: 6/27/11
Jay R. Hone, GSD General Council
For Legal Sufficiency

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: 01-503914-005

By:  Date: 6/28/11
Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Laws 2007, Chapter 290 and any and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico:

By:  Date: 6/30/11
Darryl Ackley, Secretary
Department of Information Technology

This Agreement has been approved by the SPA:

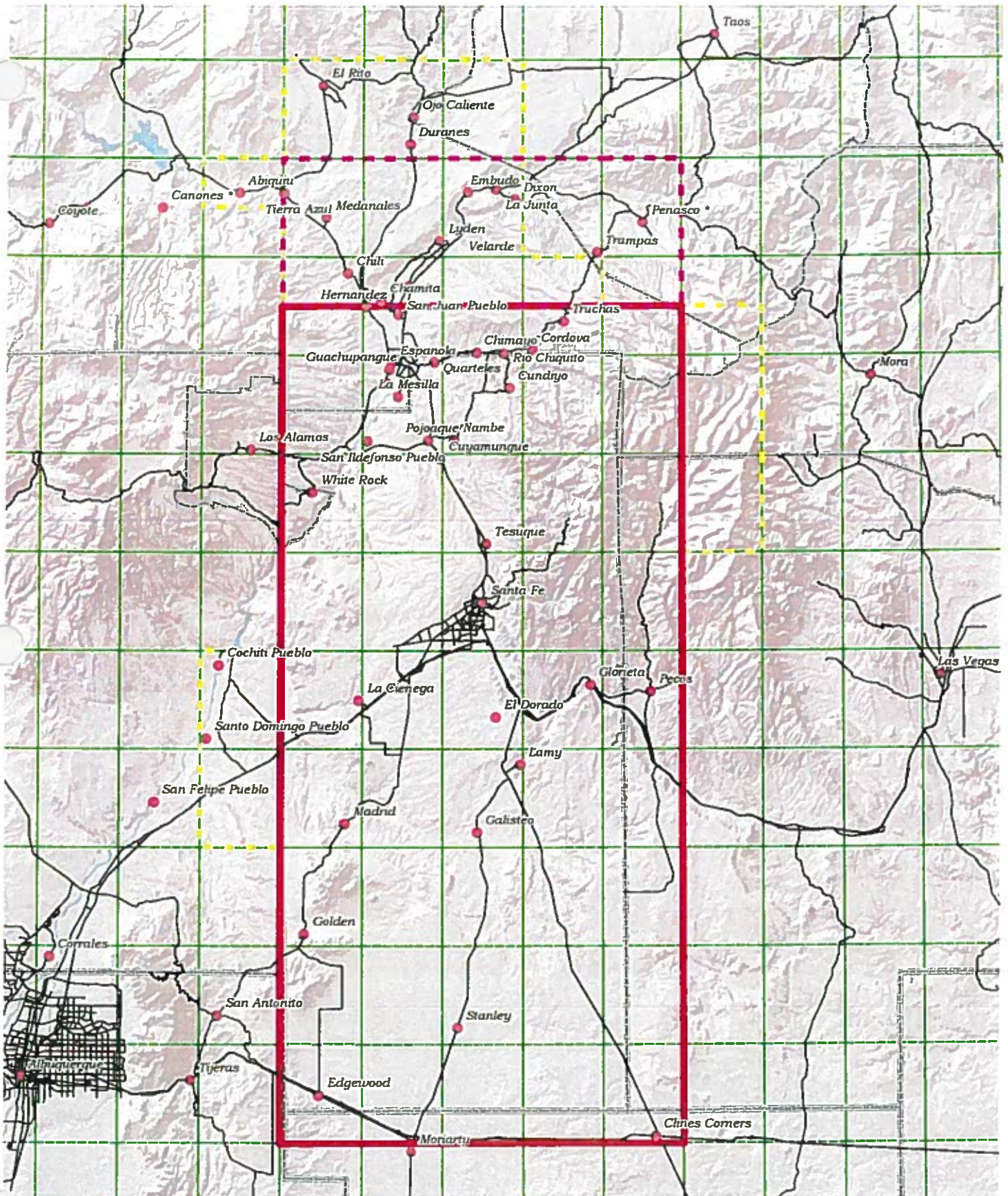
By:  Date: 6/30/11
Purchasing Agent for the State of New Mexico

Exhibit A

Service Category 6 Geographical Information System Services

Sub-service Category	Skills	Maximum Hourly Service Rate	Traveling Rate (Optional)	Products Supported
Geographic Information System Services	GIS-PA1	\$83.73	NA	ESRI GIS Products, Intergraph GIS, Open Source GIS Products
	GIS-PA2	\$143.71	NA	
	GIS-PA3	\$174.54	NA	

Exhibit A-2 - Final LiDAR Project Area



Legend

- Santa Fe County Project Area
- Proposed Maximum Project Area
- Add-on USGS Grant
- 7.5" USGS Quad Lines
- Roads
- County Boundaries

1:711,094
1 inch represents 11.22 miles
North American Vertical Datum 1988
4 2 0 4 8 12 16
Miles



August 11, 2014



Santa Fe County 2014 Regional LiDAR Project Proposed Scope of Work

Summary

Santa Fe County is seeking responses to this RFP from qualified Contractors to acquire and process light detection and ranging (LiDAR) data for approximately 2,600 to 3,400 square miles within north central New Mexico. The project area of interest is made up of urbanized areas, surface irrigated riparian areas, badlands, high desert plains and mountainous landscapes. Elevation ranges from 5,400 to 13,000 feet above mean sea level.

Purposes

This LiDAR project is undertaken to support activities such as the following (this list is not exhaustive):

- Urban, community and regional planning
- Project and infrastructure planning
- Project reporting
- Floodplain mapping
- Stormwater management
- Vegetation analysis
- Change detection
- Initial project reviews

Geographic Extent

The project area is described on *Exhibit A - Proposed LiDAR Project Area*. The project includes a minimum area of approximately 2,600 square miles that may be expanded pending additional cooperator participation as well as final per unit acquisition and production costs. The minimum project area covers the entirety of Santa Fe County, New Mexico and extends outward to capture the entirety of several hydrological unit sub-basins.

Data coverage areas shall be exceeded by a buffer of 300 feet (± 10 feet) on all sides, beyond any stated project boundary.

It should be noted that Santa Fe County will also fly 6-inch resolution imagery in these areas in spring 2014. The LiDAR derived products (e.g., bare earth surface) requested as part of this RFP must support orthorectification of this imagery, and image and LiDAR flight schedules have to be coordinated by the Contractor accordingly.

Services to be Rendered

Overview

In general terms, the collection, production and delivery of the products and services to be provided by the Contractor include the following:

- Raw LiDAR data;
- Classified LiDAR point clouds;
- TIN-based DTMs;
- Bare-earth DEM;
- Breaklines;
- Control points;
- Contours;
- Documentation of system calibration, collection and processing methods, survey methods, QA, Accuracy Testing and Reporting, and metadata;

Project management services that include progress tracking and regular communication to the Santa Fe County Project Manager and the Santa Fe County orthoimagery vendor (when requested).

Weekly reports of collection progress.

The Contractor shall furnish all materials, supervision, labor, equipment, and transportation, unless otherwise specified in this RFP to complete the following tasks and deliver the listed products.

LIDAR collection and data processing shall adhere at minimum to the USGS, National Geospatial Program, Lidar Base Specification Version 1.0, (2012) standard, as posted at <http://pubs.usgs.gov/tm/11b4/>.

In addition the Contractor shall adhere to FEMA, Procedure Memorandum No. 61 - Standards for Lidar and Other High Quality Digital Topography, as posted at <http://www.fema.gov/media-library/assets/documents/19742?id=4345>, as applicable to "Hydro-Enforcement".

Both standards are herewith incorporated into this RFP by this reference.

Respondents are invited to present alternative proposals that cause improvements in the horizontal and/or vertical accuracies of the products, even if these proposals exceed stated standards. Each such alternative proposal shall be brief, concentrating mainly on the specific aspects that cause such improvements, plus the impact on pricing.

Respondent shall describe the following in their response: LiDAR spot size and spot spread, number of returns, intensity values, NPS, data voids, spatial distribution, scan angle, accuracy, overlap, collection conditions etc.)

Clarification, emphasis on and additions to these specifications are noted below.

LIDAR Collection Requirements

Nominal Pulse Spacing/Point Density

The LiDAR data for the entire project area are to be collected at a Nominal Pulse Spacing (NPS) of 0.7 meter or less. This corresponds to a point density of approximately 2 points per square meter. In general, this target NPS of 0.7 meter or less should not be achieved through swath overlap or multiple passes.

Raw Point Cloud Requirements:

Format: Fully compliant LAS v1.3 format

If full waveform data are collected, delivery of the waveform packets is required. LAS v1.3 deliverables with waveform data are to use external auxiliary files with the extension .wdp for the storage of waveform packet data..

Georeference information shall be included in all LAS file headers.

GPS times are to be recorded as Adjusted GPS Time, at a precision sufficient to allow unique timestamps for each return.

Intensity values shall retain native radiometric resolution. The signal strength (intensity) of each return pulse shall be recorded.

Signal Returns: The LiDAR system shall be configured to collect multiple returns per pulse, with a minimum of a first return and a last return and at least one additional intermediate return (minimum 3 returns). All returns captured during acquisition shall be delivered. Return number shall be recorded. Data Voids within a single swath are not acceptable, except:

- where caused by water bodies.
- where caused by areas of low near infra-red (NIR) reflectivity such as asphalt or composition roofing.
- where appropriately filled-in by another swath.

Spatial Distribution: The spatial distribution of geometrically usable points is expected to be uniform and free from clustering. Although it is understood that LiDAR instruments do not produce regularly gridded points, collections should be planned and executed to produce a first-return point cloud that approaches a regular lattice of points, rather than a collection of widely spaced high density profiles of the terrain.

Scan Angle: For oscillating mirror LiDAR systems, the scan angle must be $\leq \pm 20$ degrees from nadir or full scan angle ≤ 40 degrees. Otherwise, scan angle must be ≤ 30 degrees.

Vertical Accuracy Requirements: LIDAR shall meet or exceed the vertical accuracies as established by the National Digital Elevation Program (NDEP) guidelines and subsequently adopted by the American Society for Photogrammetry and Remote Sensing (ASPRS). As a minimum, resulting vertical project accuracies have to satisfy the following:

- For the unclassified LIDAR point cloud, using the NDEP/ASPRS methodology:
 - o Fundamental Vertical Accuracy (FVA) ≤ 24.5 centimeters (cm) Accuracy (ACCz), 95 percent (12.5 cm Root Mean Square Error (RMSE)z).
- For the derived DEM and TIN, using the NDEP/ASPRS methodology:
 - o Fundamental Vertical Accuracy (FVA) ≤ 24.5 cm ACCz, 95 percent (12.5cm RMSEz);
 - o Consolidated Vertical Accuracy (CVA) ≤ 36.3 cm, 95th percentile, and
 - o Supplemental Vertical Accuracy (SVA) ≤ 36.3 cm, 95th percentile.

Positional Accuracy Validation: The absolute and relative accuracy of the data, both horizontal and vertical, relative to known control, shall be verified prior to classification and subsequent product development. A detailed report of this validation is a required deliverable.

Relative Accuracy Requirements: Relative accuracy shall be:

- ≤ 7 cm RMSEz within individual swaths
- ≤ 10 cm RMSEz or within swath overlap (between adjacent swaths).

Accuracy Reporting: Data shall meet or exceed the National Standard for Spatial Database Accuracy (NSSDA) accuracy standards. The NSSDA standards specify that vertical accuracy be reported at the 95 percent confidence level for data tested by an independent source of higher accuracy. For example the metadata statement shall read, "Tested __ (meters, feet) vertical accuracy at 95 percent confidence level." This reporting shall include bare-earth FVA for Point Cloud Data and DEMs, plus multiple SVAs and CVA.

Control shall be based on a state-of-the-art Airborne Global Positioning/Inertial Measurement Unit or AGPS/IMU solution and processing techniques. An AGPS PDOP of 3.2 (or smaller) shall be respected during LiDAR collection.

Supplemental Ground Control in the form of differentially corrected GPS Ground Control shall be used to supplement the Airborne GPS/IMU positional accuracy (horizontal and vertical). The supplemental

control used for the LiDAR acquisition shall utilize as much of the same control as used for the orthophotography mapping portion of this project as is reasonably possible. If different Offerors are awarded the LiDAR and Orthoimagery portions of this project, then the Contractors shall coordinate to determine which control will be best used for both purposes.

Flight lines shall have a side overlap of 20-30%, as required to ensure there are no data gaps between the usable portions of the swaths. Collections in high relief terrain are expected to require greater overlap. Any data that show gaps between the geometrically usable portions of the swaths will be rejected.

Swaths: Full swaths shall be delivered - all collected points are to be delivered. Long swaths (those which result in a LAS file larger than 2GB) shall be split into segments. Each swath shall have one cross-tie at the beginning, one at the approximate center, and one at the end. Each such segment shall be regarded as a unique swath. In addition;

- Each sub-swath will retain the original File Source ID of the original complete swath.
- Points within each sub-swath will retain the Point Source ID of the original complete swath.
- Each sub-swath file will be named identically to the original complete swath, with the addition of an ordered alphabetic suffix to the name ("-a", "-b" ... "-n"). The order of the named sub-swaths shall be consistent with the collection order of the points ("-a" will be the chronological beginning of the swath; "-n" will be the chronological end of the swath).
- Point families shall be maintained intact within each sub-swath.
- Sub-swaths should be broken at the edge of the scan line.
- Other swath segmentation criteria may be acceptable subject to prior approval.

Note that the above-mentioned Santa Fe County imagery collection effort will be flown in a North-South direction.

Scope of Collection: All collected swaths are to be delivered as part of the raw data deliverable. This includes calibration swaths and crossties. This in no way requires or implies that calibration swath data are to be included in product generation. All collected points are to be delivered. No points are to be deleted from the swath LAS files. Excepted from this are extraneous data outside of the buffered project area (aircraft turns, transit between the collection area and airport, transit between fill-in areas, etc.). These points may be permanently removed. Busted swaths that are being completely discarded by the vendor and re-flown do not need to be delivered.

Flight Window: Collection window shall be between the contract execution date and Fall 2014. Schedule will be determined based on aerial imagery acquisition and the method for acquisition and processing proposed by the Contractor. The collection window can be negotiated and adjusted based on the needs of the Santa Fe County 2014 aerial imagery acquisition. Change to the schedule must be agreed to by Santa Fe County and the Contractor. Atmospheric conditions shall be such that they are:

- Cloud, smoke, precipitation and fog-free between the aircraft and ground
- Snow free; very light, un-drifted snow may be acceptable in special cases, with prior approval.
- Free of water inundation.
- Vegetation is leaf-off, but not required as long as penetration is sufficient to create a bare-earth data and products at the specified accuracies

LIDAR Deliverable Requirements

Datums

The deliverables should be supplied to Santa Fe County in the following projections:

NAD83 HARN State Plane New Mexico Central (3002), US Survey Feet
UTM NAD83 HARN Zone 13, Meters

All project areas fall within one single UTM zone.

Data should reference the most recent Geoid model approved by the NGS, to two decimal places.

Classified Point Cloud:

All processing should be carried out with the understanding that all point deliverables are required to be in fully compliant LAS v1.3 format. Contractor shall deliver a classified LiDAR point cloud containing the following:

- Georeference information included in LAS header;
- Intensity values in native radiometric resolution;
- Point families shall be maintained intact through all processing before tiling. Multiple returns from a given pulse will be stored in sequential (collected) order.
- Tiled delivery, without overlap;

Classification Scheme (minimum):

- Code 1 – Processed, but unclassified
- Code 2 – Bare-earth ground
- Code 7 – Noise (low or high, manually identified, if needed)
- Code 9 – Water
- Code 10 – Ignored Ground (in proximity of breaklines)

ALL points not identified as Withheld are to be classified.

No points in the classified LAS deliverable will be assigned Class = 0.

Use of the ASPRS/LAS Overlap classification (Class=12) is prohibited.

If overlap points are required to be differentiated by the data producer or cooperating partner; the points must be identified using a method that does not interfere with their classification. The technique used to identify overlap must be clearly described in the project metadata files.

Point classification is to be consistent across the entire project. Noticeable variations in the character, texture, or quality of the classification between tiles, swaths, lifts, or other non-natural divisions will be cause for rejection of the entire deliverable.

Note: Class 7, Noise, is included as a convenience for the data producer. It is not required that all "noise" be assigned to Class 7.

Note: Class 10, Ignored Ground, is for points previously classified as bare-earth but whose proximity to a subsequently added breakline requires that it be excluded during Digital Elevation Model (DEM) generation.

Contractor shall perform point cloud classification services to build a bare-earth and other point classes as specified for LAS format 1.3. This includes the "ignore" layer surrounding breaklines.

Hydro Flattening Requirements

All water-surface areas that are acquired shall be hydro-flattened according to the above-mentioned USGS specifications (USGS, National Geospatial Program, Lidar Base Specification Version 1.0, 2012).

Hydro-Enforcement Requirements

Santa Fe County desires to improve the spatial accuracy of its surface stream vector data layer. In order to accomplish this goal, the County requests that respondents submit cost proposals for optional hydro-enforcement work as follows:

In areas where digital ortho photos are to be produced (see *Exhibit B - Proposed Ortho Photo Project Area*) the Contractor will construct single-line hydro feature breaklines and other breaklines as necessary to produce an improved DTM surface to support high accuracy orthorectification. Respondents should provide per square mile costs estimates for this additional work based upon high, medium and low density stream channel presence within a given area (e.g., square mile).

Should the option to produce single-line hydro feature (stream) breaklines be exercised by Santa Fe County, the following guidelines must be met:

- All vertices along single-line stream breaklines must be at or below the immediately surrounding terrain.
- Single-line stream breaklines are not to be used to introduce cuts into the DEM at road crossings (culverts), dams, or other such features, however, elevated bridges are to be removed from the DTM.
- All breaklines used to modify the surface are to be delivered as an ESRI shapefile (PolylineZ or PolygonZ as appropriate to the type of feature represented) with the DEMs.
- Each shapefile will include properly formatted and accurate georeference information. All shapefiles must include a correct and properly formatted *.prj file.
- Breaklines must use the same coordinate reference system (horizontal and vertical) and units as the LiDAR point delivery.
- Breakline delivery may be as a continuous layer or in tiles, at the discretion of the data producer. In the case of tiled deliveries, all features must edge-match exactly across tile boundaries in both the horizontal (X-Y) and vertical (Z) spatial locations.

TIN

Contractor shall build a TIN from the point cloud and use it to generate three deliverables:

1. A non-gridded DTM - to be used for orthorectification of the project's 2014 imagery
2. A gridded DEM - suitable for use in the USGS 1/9-arc-second DEM (NED)
3. Contours, in ortho production areas only

TIN-Based Digital Terrain Models (Non-Gridded DTMs)

Contractor shall build TIN-based DTMs to be used for the orthorectification of the Santa Fe County 2014 imagery.

Bare Earth Surface (Gridded DEM)

- Contractor shall build one DEM to satisfy USGS NED (1/9-arc-second DEM) requirements for all areas;
- Delivery in an industry-standard, GIS-compatible, 32-bit floating point raster format (ERDAS .IMG preferred);
- Georeference information shall be included in raster file;
- DEM tiles will show no edge artifacts or mismatch;
- Void areas (i.e., areas outside the project boundary but within the tiling scheme) shall be coded using a unique "NODATA" value. This value shall be identified in the appropriate location within the file header;

- Vertical Accuracy of the bare earth surface raster data shall be similar (plus or minus 10%) to the one specified for the raw point cloud above. Depressions (sinks), natural or man-made, are not to be filled (as in hydro-conditioning and hydro-enforcement) except for in specified project areas;
- Water Bodies (ponds and lakes), wide streams and rivers ("double-line"), and other non-tidal water bodies shall have been hydro-flattened within the DEM, subject to the USGS specifications. The DEM will be processed and supplemented with 3D operator-generated breaklines as necessary to meet the USGS specifications.

Contours

Contractor shall cut contours as specified, using the TIN-based DTM datasets.

Contours will be generated for all project areas where digital orthophotography is produced. Contour interval ("ci") will be 2 foot isolines.

Non-crossing contour lines will be developed from the completed TIN-based DTM so that vertical accuracy is maintained (plus or minus 10%).

Every fifth contour line (10 foot isolines) shall be an attributed index contour (INDEX = 1

All contour lines shall be solid and unbroken features within each separate tile.

Elevation values are assigned to the contour lines and carried as integer attributes.

Delivery and Tiling

Contractor shall provide all deliverables that are produced from LiDAR data (other than LiDAR swaths), such as TINs, DTMs, DEMs, and contours in the formats as outlined below.

All project area boundaries are understood to include the specified buffer.

Tiles which lie completely within the project area shall be complete to the tile edges.

The deliverables should be supplied to Santa Fe County in the following manner:

- The classified point cloud data shall be delivered as tiles as UTM and State Plane datasets, as described below.
- The contour data shall be delivered as a State Plane dataset, as described below.

UTM Datasets

Tiles shall be 1500 x 1500 meters named on the even UTM lines derived from the southwest corner of each tile using the last digit of the UTM zone, the three digits of the west UTM line, and four digits from the south UTM line. For example: zwwwssss

Where z = last digit of UTM zone

www = west limit in thousands

ssss = south limit in thousands

- Tiled deliverables shall conform to the tiling scheme, without added overlap.
- Tiling scheme will be used for all tiled deliverables in this projection.
- Tiled deliverables shall edge-match seamlessly in both the horizontal and vertical.
- All tiles shall be completely filled in (even if it covers only a portion of the buffer).

State Plane Datasets

Tiles shall be 1 mile x 1 mile approximately, based upon Public Land Survey System sections, and labeled according to the Santa Fe County tiling schemes which will be provided to the contractor. This tiling scheme will be used for all tiled deliverables.

Tiled deliverables shall edge-match seamlessly in both the horizontal and vertical, as applicable.

Control and Calibration Points

The contractor shall deliver all control and reference points used to validate the point data and derivative products. They shall be delivered in ESRI shapefile (.shp) format with associated FGDC-compliant metadata.

Extents

The contractor shall deliver a geo-referenced, digital, spatial representation of the precise extents of each delivered dataset. This should reflect the extents of the actual LIDAR source or derived product data, exclusive of Triangular Irregular Network (TIN) artifacts or raster NODATA areas. A union of tile boundaries or minimum bounding rectangle is not acceptable. An ESRI Polygon shapefile is preferred.

Documentation

Project Plan

- Delivered before the flights.
- Outlines the proposed methodology for collection and processing.
- Includes risk mitigation strategies and contingency planning.

System Calibration Report

- Delivered before the flights.

Collection Report

- Includes mission planning and flight logs.
- Includes study area PDOP, mission date, time, flight altitude, airspeed, scan angle, scan rate, laser pulse rates.
- Statistical report summarizing the results of the airborne GPS adjustment and the overall accuracy of the adjusted IMU data.

Survey Report

- A record of field work procedures.
- A record of horizontal and vertical datums utilized.

Processing Report

- Data derivation and adjustments.
- Classification information.
- Product generation methodology.
- Hydro-flattening and enforcement information.
- Any problems encountered and solutions used in resolving such problems.

QA Report

- Quality assurance procedures and results.
- Verification of vertical and positional accuracy of the point cloud and derivatives.
- Detailed explanation of the data validation process.
- Discussion of artifacts and their causes.

FGDC compliant, XML format metadata for:

- Overall project
- Each lift
- Classified point data
- Bare-Earth DEM
- TIN-based DTMs
- Breaklines
- Contours
- Control Points

Please see the USGS LIDAR Metadata Example provided in the USGS specifications above.

Independent Quality Control (QC)

The Contractor should be aware that Santa Fe County may request independent verification of the deliverables to ensure that project specifications are met. The QC party would perform the following actions:

- Estimate the vertical accuracy of the control points at the 95% confidence interval;
- Estimate the vertical accuracy of the bare-earth classification against independent check points;
- Perform system verification, laser range verification, and AGPS/TMU verification (proper PDOP, etc.);
- Check that point cloud classifications were done correctly;
- Check that flight lines were flown as planned;
- Confirm that all collected LiDAR data are covered by the resulting swaths as specified, together with the required cross-ties;
- Confirm the GPS baseline lengths;
- All files are readable in CAD and ArcGIS;
- All files are named correctly;
- Confirm that the data covers the entire project area;
- Confirm that the data has no unacceptable data voids (e.g. due to incorrect flight heights, clouds, or improper flight lines);
- Confirm that the NPS adheres to project specifications; assessment will be made against single swath, first (or applicable last) return data located within the geometrically usable center portion (typically ~90%) of each swath. In order to ensure uniform densities throughout the data set:
 - A regular grid, with cell size equal to the design NPS will be laid over the data.
 - At least 90% of the cells in the grid shall contain at least 1 LiDAR point.
 - Clustering will be tested against the 1st return only data
 - Acceptable data voids identified elsewhere in this specification are excluded.
- Confirm that the horizontal and vertical datums adhere to the project specification;
- Confirm that the projection and units adhere to the project specification;
- Confirm that the LAS files are in a consistent version and have proper header information;
- Confirm that each point in the point cloud has the appropriate attributes (GPS times, coordinates, elevation, intensity, return number, return classification);
- Confirm that all points are classified into the specified scheme;
- Ensure there are no seam lines between flight swaths;
- Ensure metadata is complete;
- Confirm that DEMs have correct names and have the correct post spacing;
- Confirm that contours are at the correct interval and are indexed and labeled. Ensure no crossing contours; and
- Ensure that hydro flattening is correct by confirming that lake and pond breaklines are a constant elevation, that streams have a continuous downstream flow (no stair steps), and water points are correctly identified.

Term

The awarded contract will begin on the date it is signed and ends, unless sooner terminated under the Terms and Conditions of the Contract or extended by a contract amendment, on June 30, 2015.

Access Agreements:

The successful Contractor shall provide written notification to the County on the number and locations of ground control points used in this project. The Contractor shall determine land ownership encompassing those locations and as required, obtain site access permission. The Contractor shall notify

landowners and coordinate with the appropriate personnel prior to on-site or over-site activities. The Contractor shall be solely responsible for the requisite filing of flight plans and obtaining appropriate permissions from the FAA and other agencies as necessary.

Option for Subsequent Partnerships

To the extent that other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, member jurisdictions may choose to directly contract with the Contractor for additional and related products independently of Santa Fe County.

In such case, the terms of the contract between the Contractor and Santa Fe County shall be honored, even though Santa Fe County will not be facilitating the additional deliverables. The vendor shall deal directly with the jurisdiction concerning payments, disputes, and other topics related to the additional products. Santa Fe County shall have no responsibility or liability to the vendor, the requesting jurisdiction or any other party in connection with any such direct purchase or performance of an additional product.

All partnerships pursued without Santa Fe County facilitation shall not interfere with the work requested through this RFP. Additional products that are independently requested are developed after deliverables for the scope of work mentioned herein are completed.

Through this Option of Subsequent Partnerships, the partners could work directly with the Santa Fe County LiDAR vendor, based on the quotes given in the pricing form, to attain that data.

Project Timeline

Below is a preliminary timeline. This is subject to change based on the timing and coordination with the aerial imagery acquisition that will be occurring in the spring and summer. A final schedule will be produced and included in the contract.

January 2014 Partners receive budget approvals, which determines if the project can begin

February 2014 Statement of Work is written; contract finalized

March 2014 Kick-off meeting

April - June 2014 LIDAR Acquisition (may or may not be coordinated with aerial imagery flights)

July- September 2014 LIDAR Processing

October - November 2014 All LIDAR and derivative deliverables due

Exhibit A - Proposed LiDAR Project Area



Legend

- Santa Fe County Project Area
- County Boundaries
- Proposed Maximum Project Area
- 7.5' USGS Quad Lines
- Roads

1:710,723

1 inch represents 11.22 miles

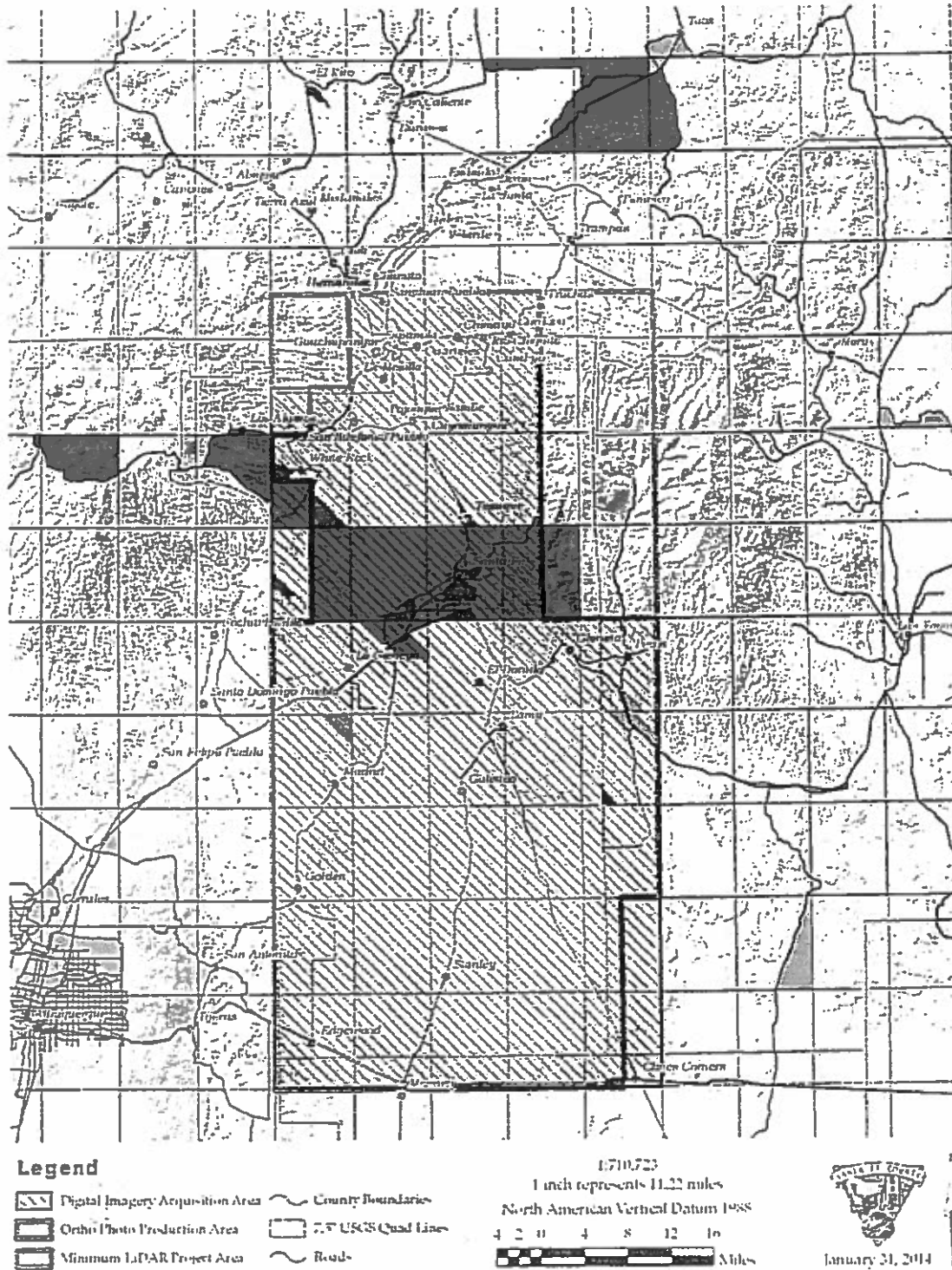
North American Vertical Datum 1988

0 2 4 8 12 16 Miles



January 31, 2014

Exhibit B - Proposed Ortho Photo Project Area



Santa Fe County 2014 Digital OrthoPhotography Project Proposed Scope of Work

I. SCOPE OF SERVICES

A. GENERAL PROJECT INFORMATION

Santa Fe County ("the County") is seeking proposals from qualified firms/individuals ("Offeror") to provide the photo control survey, aerial survey, and rectification services necessary for the production of high resolution, 4-band (true color RGB with color infrared {CIR} band 4) digital orthoimagery (DOI) and optional planimetric mapping for selected areas of the County of Santa Fe for use in a Geographic Information System (GIS). The work completed for this project shall be suitable for the production of digital photogrammetric mapping meeting the specified accuracy requirements. Funding commitments from local partners may not be confirmed until actual unit-costs are provided. Project funders will retain ownership of the imagery and associated products.

Exhibits are attached to aid Offerors in both understanding the scope of this project and in formulating work plans required for proposals. *Exhibit A - Proposed LiDAR Project Area* shows the overall area of interest upon a shaded relief basemap with major roads, and cities and town. The base map illustrates the variation in the elevation in the County from approximately 5400 feet along the Rio Grande to over 13,000 feet in the Sangre de Cristo Mountains.

Acquisition Area: (see *Exhibit B - Proposed Ortho Photo Project Area*) 4-band digital imagery to be collected for the production of 0.5 foot pixel resolution capable of meeting a horizontal positional accuracy of +/- 2 feet or better. Minimum acquisition area will be approximately 2,210 square miles. Acquisition area may be expanded northward in contiguous blocks contingent upon funding commitments from local cooperators in this area.

Production Area: (see *Exhibit B - Proposed Ortho Photo Project Area*) 4-band DOI to be delivered at a 0.5 foot pixel resolution capable of meeting a 95% confidence level in horizontal positional accuracy of +/- 2 feet or better at a printed map scale of 1 inch = 100 feet.. Propose minimum production area will be approximately 2,090 square miles. Production area may be expanded northward in contiguous blocks contingent upon funding commitments from local cooperators in this area. Final production areas will ultimately be determined by per unit (square mile) costs, available budget including cooperator funding, and determination on whether to exercise optional product acquisitions (e.g., planimetric mapping, high density hydro-enhancement, NGS blue booking, etc). It is fully anticipated that funds will be available for the production of an absolute minimum of 2,000 square miles of 0.5 foot pixel resolution 4-band DOI.

Santa Fe County anticipates updating surface models with a LiDAR derived, hydro-enhanced digital terrain model (DTM) to be produced in conjunction with this digital orthoimagery project. The larger extents of the 2014 LiDAR project can be seen on both Exhibits A and B.

Proposals for the optional production of Building Footprint Planimetrics are requested for the purpose of updating and extending data derived from 1992 and 2001 projects. .

GROUND CONTROL SURVEY

1. General

The Contractor shall locate and establish the necessary ground control for absolute orientation of stereo models. Digital terrain models and/or digital elevation models for this orthoimagery project will be provided by the County via its selected LiDAR contractor and shall be used in the orthophoto rectifications process. It is the responsibility of the Contractor to identify and field survey the ground control needed to satisfy the orthophoto rectification process. The Offeror shall specify the preferred specifications of paneling or marking for photo identification. It is the Contractor's responsibility to provide the specifications, including placement, size, and shape of the panels to be used for the establishment of geodetic control in the rectification of the orthophotography.

Ground control shall be supplemented by Airborne Global Positioning/Inertial Measurement Unit or AGPS/IMU solution and processing techniques. An AGPS PDOP of 3.2 (or smaller) shall be respected during digital imagery collection.

2. Existing Control Stations

In order to ensure consistency with past projects, horizontal and vertical control for the aerial survey and derivative products must be based on the existing High Accuracy Reference Network (HARN). There are several HARN stations in the Santa Fe County vicinity:

Station Name	NGS PID	Location
DOT 4	AI5440	NMSHTD (NM State Highway & Trans. Dept.) General Office
SANTAIR	FO1673	Santa Fe Airport
SAF ARP	AC7065	Santa Fe Airport
I40 R8	FO0983	Interstate-40 (7 miles NW of Edgewood)
MORIAIR 2	EQ1151	Moriarty Airport
LOS ALAMOS	FO1671	LANL (Los Alamos National Labs) – Tech Area 33.

For redundancy/checking and better determination of error statistics the Contractor shall simultaneously collect data on at least two of these stations during all flights. The Contractor shall use the most up to date National Geodetic Survey (NGS) values for these stations. Wherever possible, existing 1st order control monuments shall be reoccupied and paneled as required for this project.

The supplemental control used for the orthophotography acquisition shall utilize as much of the same control as used for the LiDAR mapping portion of this project as is reasonably possible. If different Offerors are awarded the LiDAR and Orthoimagery portions of this project, then the Contractors shall coordinate to determine which control will be best used for both purposes.

3. New Control Stations

Should an Offeror find/determine that existing 1st order control is not adequate to accurately establish needed ground control, new control stations (monuments) may need to be established. The County would prefer that such new control stations not only be of 1st order accuracy but also that such new stations (monuments) be blue-booked with the NGS (National Geodetic Survey). Offerors should include cost estimates for establishing and blue-booking new 1st order control monuments with the NGS as a separate, optional cost (i.e., cost per monument).

4. Standards and Specifications

All coordinates shall be accurately referenced to the HARN New Mexico State Plane Coordinate System, Central Zone (3002), North American Datum of 1983 [NAD83 (HARN)] and to the North American Vertical Datum of 1988 (NAVD88) in units of US Survey Feet.

C. AERIAL IMAGERY

1. General

The acquisition of digital imagery shall be planned as to be capable of meeting a 95% confidence level in horizontal positional accuracy of +/- 2 feet or better at a printed map scale of 1 inch = 100 feet for the specified areas. The imagery shall be acquired in four-band (natural color RGB in band 1 to 3 and infrared in band 4).

2. Camera

The Contractor shall define what camera make and model will be used, define how the camera will be stabilized and the precision and focal length of the camera. The Contractor shall provide a certificate showing calibration within 6 months of the flight.

3. Aerial Photography and Photographic Products

4-band digital aerial photography to cover the areas of mapping as indicated on *Exhibit B - Proposed Ortho Photo Project Area*. Aerial photography shall be in conformance with specifications established by the American Society for Photogrammetry and Remote Sensing.

All aerial imagery shall be obtained during "leaf off" during April/early May 2014 and shall be undertaken:

- a. With the optical axis of the camera as nearly vertical as possible and in no case shall the tilt exceed 3 degrees.
- b. When atmospheric conditions are such that clear and well-defined images can be obtained. Imagery shall not be acquired when the ground is obscured by snow, clouds, cloud shadows, haze, smoke, dust and/or precipitation.
- c. At the time of day when shadows caused by topographic relief, and/or sun angle will be at or near a minimum. Aerial imagery shall not be attempted when the sun angle is less than 30 degrees above the horizon. Excessive and deep shadows may be cause for rejection of photography.
- d. With a minimum forward overlap in the line of flight averaging approximately 60% and a minimum of 30% sidelap, with greater overlap in steep terrain if needed to capture the bottoms of all canyons.
- e. The camera tilt will not be more than 3 degrees from the vertical axis at the time of image acquisition, nor shall it exceed 5 percent between successive acquisition stations.
- f. Deviation from planned flight height shall not exceed 5 percent.
- h. Efforts shall be made to ensure a uniform contrast between images, with no smears, blemishes or digital artifacts.
- i. Unacceptable aerial photography shall be reflown at no additional cost to the County. Reflight coverage must overlap accepted photography by at least two stereo-models. Photo center points and borders will be provided with refight imagery in the same format as for initial imagery.

4. Photographic products

- a. One set of digital "raw imagery" shall be delivered to the County in either TIFF or JPEG 2000 format. File naming convention should be according to flight line number and photo/exposure number. All targeted points shall be identified. Digital "raw imagery" shall be submitted to the County for review as soon as practicable.
- b. Deliverables shall include:
 - Index of photo centers in a point layer in ESRI shapefile format.
 - Index of frame borders ("footprints") in a polygon layer in ESRI shapefile format. Each feature in these layers should include the date and time the frame was taken.

Access Agreements

The successful Contractor shall provide written notification to the County on the number and locations of ground control points used in this project. The Contractor shall determine land ownership encompassing those locations and as required, obtain site access permission. The Contractor shall notify landowners and coordinate with the appropriate personnel prior to on-site or over-site activities. The Contractor shall be solely responsible for the requisite filing of flight plans and obtaining appropriate permissions from the FAA and other agencies as necessary.

D. DIGITAL ORTHOIMAGES

Digital Orthophotos shall be produced for the area shown as "Ortho Photo Production Area on *Exhibit B - Proposed Ortho Photo Project Area*". The contrast between adjoining orthophoto images shall appear to be reasonably consistent. All linear features on the ground shall appear linear, and all bridge warping shall be eliminated in the final orthorectified images, including in the infrared band.

Digital Orthoimage files shall generally be delivered in overlapping 5500 x 5500 foot tiles centered on Public Land Survey System (PLSS) sections or projected sections. A PLSS section grid layer will be provided by the County as a guide/template for image tiling. In areas where section dimensions are longer than 5300 feet (e.g. along or adjacent to correction lines) tile size shall be adjusted to extend 200 feet beyond section lines, again centered on the PLSS sections. The need for such "special" sections should be determined prior to finalization of the contract.

Digital Orthoimagery shall also be delivered as one project-wide mosaic in ECW format. Pending commitments from other local partners, project subset mosaics may be requested for City of Santa, City of Espanola and/or Rio Arriba County portions of the project. Offerors should state whether or not production of such subset mosaics will incur additional costs, and if so, provide pricing details for project subset mosaics.

Offerors are encouraged to propose/discuss techniques which will ensure a proper mosaic of tiled imagery (e.g. tile to tile edgematching, tile to tile uniform contrast/density, reliable cross tile measurements, etc.)

Before full production is begun, the successful Offeror shall provide the County with a prototype area of at least 4 square miles for quality control review. A notice to proceed for the full project will follow if all quality control checks are satisfactory. It is the sole responsibility of the County to determine the acceptability of the orthophoto product.

File structure for the raster image files will be TIFF format with Environmental Systems Research Institute (ESRI) world files AND ECW format for each tile. File naming convention should be opTTRRSS.tif for orthos & opTTRRSS.twf for worldfiles (lower case op – where TT is Township number, RR is Range number, and SS is Section number – leading zeros where applicable – ex. op100701.tif is orthophoto for Township 10, Range 7, Section 1).

FGDC (Federal Geographic Data Committee) compliant metadata will accompany the DOI files.

E. PLANIMETRIC MAPPING

Optional planimetric mapping should be based on the DOI and shall be produced so that the position of all well-defined photogrammetrically compiled map features on the finished digital database capable of meeting a 95% confidence level in horizontal positional accuracy of +/- 2 feet or better at a printed map scale of 1 inch = 100 feet. Offerors are requested to provide pricing estimates for the collection of building footprint polygons attributed with building height for high medium and low density urbanized areas on a per square mile basis (per unit costs). Offerors shall indicate their proposed methodology and equipment to be used for compiling planimetric data.

Collection via typical stereo photogrammetric methods is preferred. The County will consider alternate methods for building foot print collection and Offerors are invited to present alternative proposals for the collection of these data. Each such alternative proposal shall be brief, concentrating mainly on the specific aspects of the alternate method, plus the impact on pricing.

Regardless of collection methodology, delineation of building footprints shall be compiled as closed polygons attributed with building height and delivered to the County in an ESRI shapefile PolygonZ format. File naming convention to be determined. FGDC compliant metadata will accompany the planimetric files.

F. DELIVERABLES

The COUNTY shall receive the following items:

1. Flight plan and control layout map, both in digital and hard copy formats.
2. Digital copy of "raw imagery" on CD-ROMs or other appropriate media, with a digital index/catalog of this imagery.
3. Photo index consisting of ESRI shapefiles of photo center points and "footprint" polygons.
4. Reports on: camera calibration, ground control, analytical aerotriangulation solution(s), horizontal accuracy of the DOI, accuracy of airborne GPS, automation procedures and QC/QA measures.
5. Digital orthophotography: One set of the DOI raster image data files in both ECW and TIFF file formats and associated world files and metadata file(s) provided on an external hard drive.
6. Digital planimetric mapping of building footprints: One set of the files in an ESRI shapefile PolygonZ format with associated metadata file(s) delivered on CD-ROMs or other appropriate media.

The delivery of digital orthophotography will be in phases, based on project funding.

1. Acceptance and Rejection of Products

Acceptance: Representatives of the County will be conducting in-house reviews of all products received. These include preliminary as well as final products, hard copies, and digital products. These representatives will perform all checks in a timely and orderly manner. The County may retain other CONSULTANT(s) to support this review process for all or part of this project. The Contractor shall be responsible for correcting errors or other inconsistencies that represent noncompliance with the specifications agreed to by the Contractor and the County. In no case will the completion date jointly agreed upon by the Contractor and the County be extended without the prior written approval of the County. Acceptance criteria for the primary deliverables will be categorized into data integrity verification (including format and data structure verification) and accuracy verification. After initial checking, work increments will be categorized by the County as follows:

Accepted: Orthophotography and derived products (i.e. planimetrics, etc.) that meet specifications will be formally indicated as "Accepted". Payment for work completed will not be made until the products are accepted by the County regardless of the number of edits or degree of corrections required.

Rejected: The number and character of errors detected by the County are such that the product is returned to the Contractor without complete editing. The Project Manager will formally notify the Contractor of the REJECTED status of the product. The Offerors shall edit and correct the product for resubmittal. If, at the sole discretion of the County, there are an undue number of rejected products, the County may require the Offeror to suspend production until the problems contributing to the rejections are identified and corrected. This mechanism will be used for data sets which do not meet accuracy specifications, data integrity requirements, and/or data formatting requirements.

G. QUALITY CONTROL AND ASSURANCE

The Offeror shall provide a detailed description of the quality assurance/quality control (QA/QC) processes that will be employed in the execution of this project. The successful Contractor shall be required to provide QA/QC reports twice; once at the time of delivery of the prototype area and also at the final delivery of the remainder of the orthophotos. Included in the QA/QC reports will be airborne GPS accuracy reports, automation procedure(s) reports and other data used in this process. This information will be used by the County to support deliverable review and acceptance.

1. Project Tracking and Reporting

It is expected that several meetings between the successful Offeror's project management staff and the County will be required during the course of the project. The Offeror shall indicate the number of visits and the milestones or approximate schedule of such visits that are planned in the course of the project. Address significant milestones including deliveries of products and any meetings, working sessions or conferences with the County.

The Offeror shall maintain procedures throughout the project for tracking and reporting progress in the photogrammetric mapping process. Initial tasks of photography and aerial triangulation will be tracked and reported as a percentage of the total. Reporting on this phase of the project will be weekly initially and monthly once a regular production schedule is being maintained. As part of the proposal response, Offerors shall submit a written description of the project tracking procedures and systems that will be employed.

H. PROJECT SCHEDULE

Offerors shall indicate a schedule for completing each of the deliverables identified in the Request for Proposal. Include the start and end dates and intermediate delivery dates for this project.

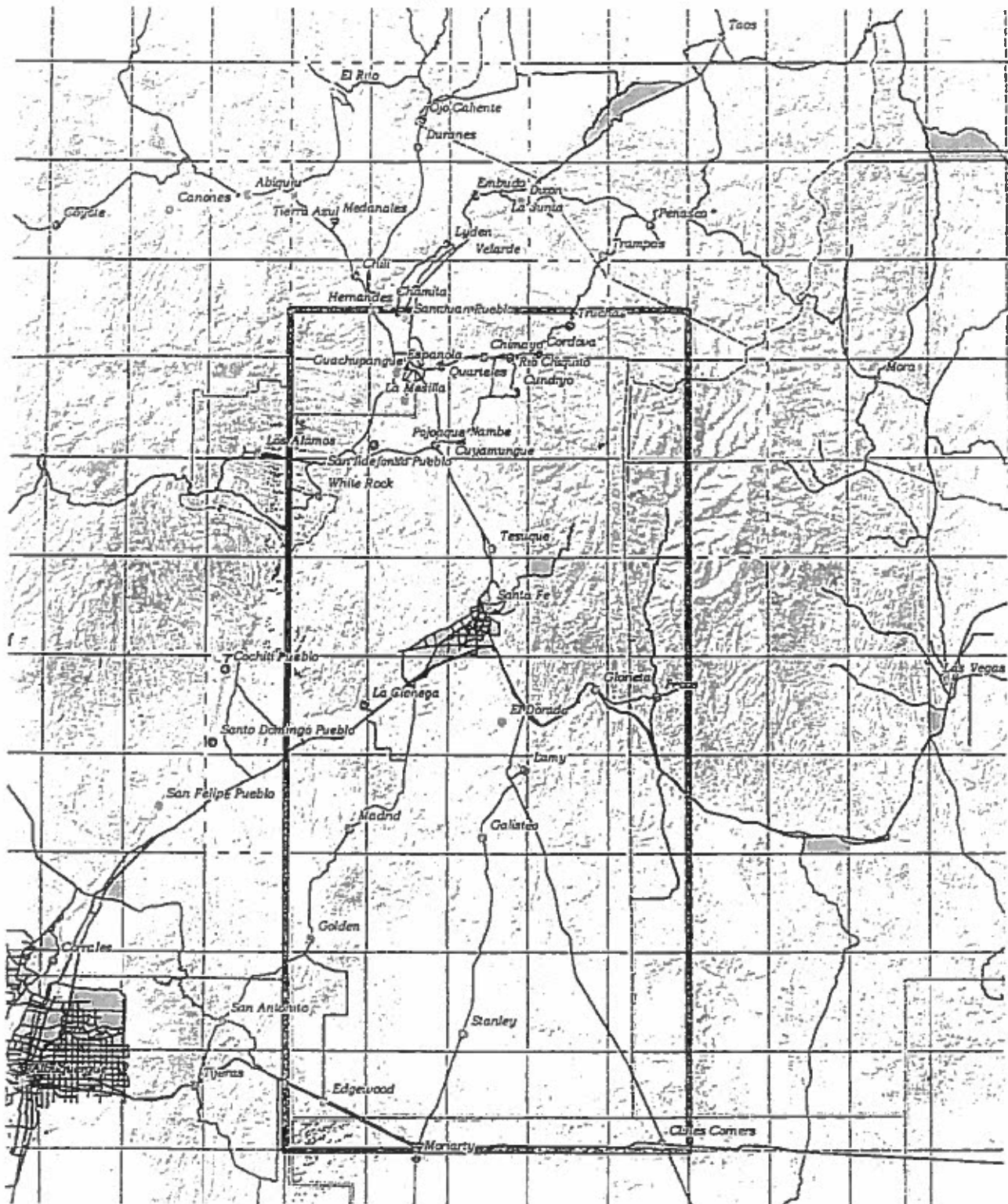
I. ALTERNATIVE PROCEDURES

1. Alternative Procedures






Due to changes, advancements, or refinements in technology, Offerors are encouraged to propose alternative means for achieving the purposes of this project. Any recently developed techniques, products, or technologies that can deliver high quality and economical performance will be considered. Responses shall address the requests and specifications contained in this RFP in addition to any alternative proposals. Any proposed alternatives must be demonstrated to be clearly superior and able to meet all project goals and requirements.


Offerors shall elaborate on any proposed exceptions. If exceptions are taken, state the general conditions involved, the exceptions taken, and alternative language.

Exhibit A - Proposed LiDAR Project Area



Legend

-  Santa Fe County Project Area
-  Proposed Maximum Project Area
-  County Boundaries
-  7.5' USGS Quad Lines
-  Roads

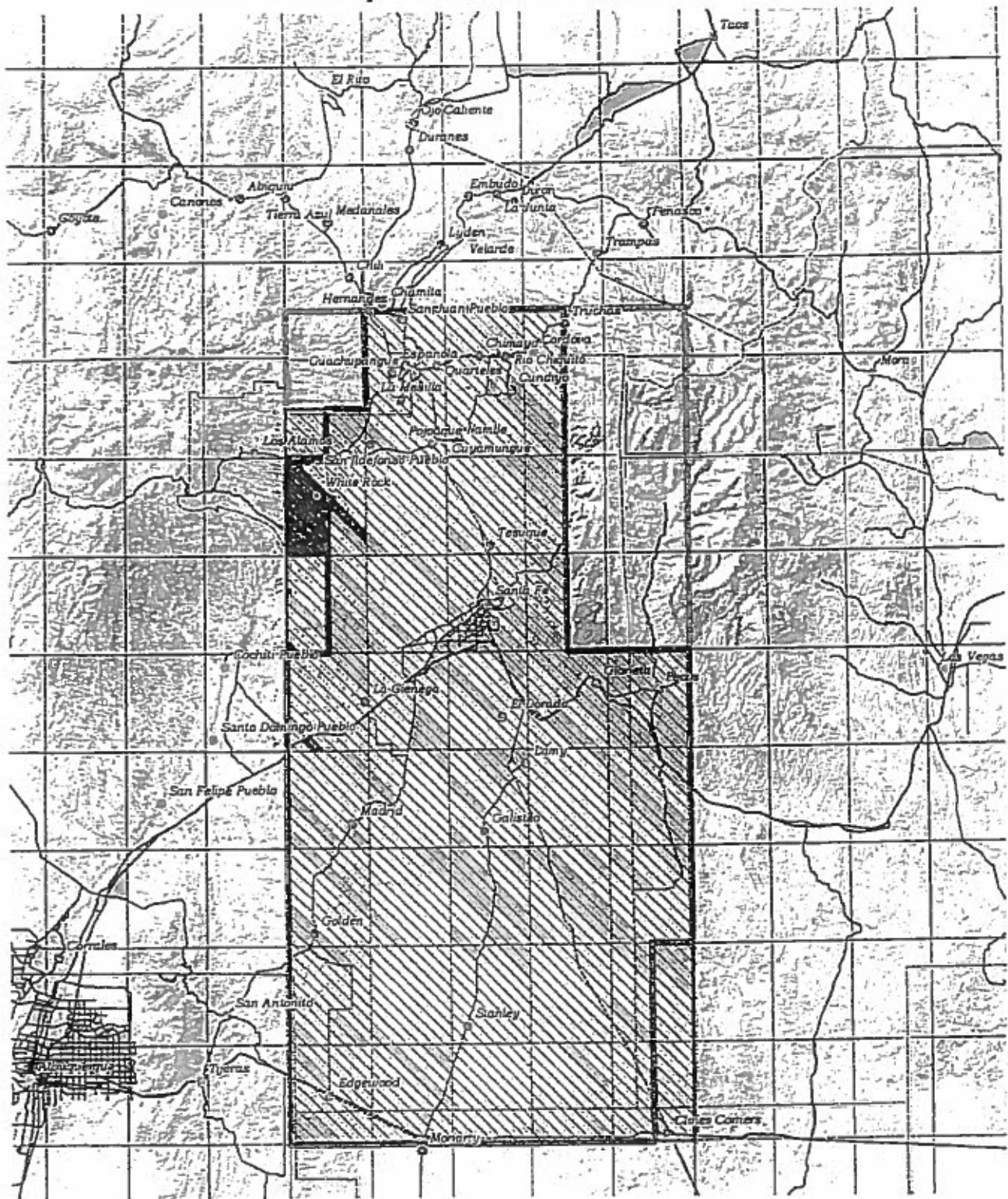
1:710,723
1 inch represents 11.22 miles
North American Vertical Datum 1988
4 2 0 4 8 12 16
 Miles



January 31, 2014



Exhibit B - Proposed Ortho Photo Project Area



Legend

- Digital Imagery Acquisition Area
- Ortho Photo Production Area
- Minimum LiDAR Project Area
- County Boundaries
- 7.5' USGS Quad Lines
- Roads

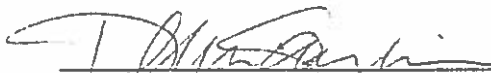
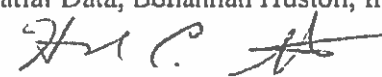
1:710,723
 1 inch represents 11.22 miles
 North American Vertical Datum 1988
 4 2 0 4 8 12 16
 Miles



January 31, 2014

Acknowledgement and Acceptance of Project Scope of Work

I, Dennis Sandin, undersigned below, acknowledge and accept the Scope of Work for the 2014 Santa Fe County Digital OrthoPhotography and 2014 Regional LiDAR Project detailed herein on behalf of Bohannon Huston, Inc.


Dennis Sandin, Senior Vice President
Spatial Data, Bohannon Huston, Inc


2.27.2014
Date

2/27/2014

Phase IA - Source Data Acquisition

Aerial Mission Planning/Ground Photo Control

Task	Fee
Aerial Mission Photo Control	\$ 22,500.00
Blue Book per Monument (not feasible in this window?)	not estimated
Aerial Photography - minimum 2,210 sq miles	\$ 65,500.00
Eagle UltraCAM 0.5' resolution	
Delivery	
Flight Lines/plan, control layout map, and data (raw imagery), photocenters, photofootprints (photo index), camera calibration	
Sub-Total	\$ 88,000.00
NMGRT @ 7.000%	\$ 6,160.00
TOTAL	\$ 94,160.00

Phase IB - LIDAR Data Acquisition

Aerial LIDAR Survey Mission with Airborne GPS Control and IMU

Task	Maximum Fee	Minimum Fee
LIDAR Mission Ground Control	\$ 18,500.00	\$ 11,500.00
LIDAR Acquisition Q2 (Minimum Area - 2,600 Square Miles)		\$ 367,224.00
LIDAR Acquisition Q2 (Maximum Area - 3,400 Square Miles)	\$ 471,240.00	
Raw Point Cloud Collection Q2 (NPS = 0.7m)		
Delivery		
Flight Lines and data, raw point cloud		
Option B - 8mm Exabyte Tape (per set)		
Sub-Total		
NMGRT @ 7.000%		
TOTAL		

Phase II - Data Production

Task	Labor Hours	Labor Category	Direct Cost	Fee	Fee
A.1) Analytical Aero Triangulation	160	PA2	143.71	\$ 22,993.60	\$ 33,466.00
	60	PA3	174.54	\$ 10,472.40	
B.1) Classified Point Cloud - ortho area	380	PA1	83.73	\$ 31,817.40	
	360	PA2	143.71	\$ 51,735.60	\$ 114,970.20
	180	PA3	174.54	\$ 31,417.20	
B.2) Bare-Earth DEM - ortho area	120	PA2	143.71	\$ 17,245.20	\$ 17,245.20
B.3) Break lines (as required for specified ortho production area)				\$ 139.83	/Section
A.2) Orthoproduction (2087 sq mi)				\$ 17.15	/Section
B.4) Optional Hydro-Enforcement - 3D Stream lines					
B.4.a Light Density Stream Collection				\$ 41.87	/Section
B.4.b Moderate Density Stream Collection				\$ 334.92	/Section
B.4.c Heavy Density Stream Collection				\$ 669.84	/Section
B.5) TIN & DTM				\$ 12.56	/Section
B.6) 2 foot Contours				\$ 27.63	/Section
B.7) Optional Planimetrics					
B.7.a Light Building Collection				\$ 62.80	/Section
B.7.b Moderate Building Collection				\$ 502.38	/Section
B.7.c Heavy Building Collection				\$ 837.30	/Section
6) Delivery					
Multiple products depending on options exercised					
Total					
NMGRT @ 7.000%					
TOTAL					

Deliverables	
Project Plan	Includes proposed methodology for collection and processing; also includes risk mitigation strategies and contingency planning.
System Calibration	Report must be supplied prior to flight.
Collection Report	Includes mission planning and flight logs; study area PDOP, mission date, time, flight altitude, airspeed, scan angle, scan rate, laser pulse rates
Survey Report	Includes details of the collection of control and reference points used for calibration and QA/QC.
Processing Report	Includes calibration information, classification information and product generation methodology.
QA Reports	Includes verification of vertical and positional accuracy of the point cloud and derivatives; also a detailed explanation of the validation process. Also includes artifacts and their causes.
Metadata	FGDC-compliant, XML format. One for each of the following: overall project, each lift, the classified point data, the bare-earth DEM, breaklines, intensity images, contours
Control and calibration points	All control and reference points used to validate the point data and derivative products. In ESRI shapefile (.shp) format with associated FGDC-compliant metadata.
Digital Representation of Extents	Georeferenced, digital spatial representation of the extents of each delivered dataset, in ESRI shapefile (.shp) format.
Raw Point Cloud	All swaths, returns, and collected points, fully calibrated, adjusted to ground, by swath, in LAS v1.3 format.
Classified Point Cloud	All swaths, returns, and collected points, fully calibrated, adjusted to ground, by tiles, with classification scheme, in LAS v1.3 format.
Breaklines	Includes stream centerlines, drainage ditches, tops and bottoms of streambanks, ridge lines, road crowns, levees, bulkheads, seawalls, road embankments, curbs (anything that directs the flow of water); in ESRI shapefile format (PolylineZ or PolygonZ as appropriate to the type of feature represented).
TIN	To be used to assess the accuracy of the point cloud.
Bare Earth Surface (Raster DEM)	Cell size no greater than 3 meters and no less than the design NPS, in ERDAS .img format.
Contours	2 foot, in ESRI shapefile (.shp) format.
Planimetrics	in ESRI shapefile (PolygonZ) format

Santa Fe County Cost Estimate Labor Backup - GSA Rates

				Cost Estimate SPA Rates	Cost Estimate GSA Rates
Aerial Mission Photo Control				\$ 22,500.00	\$ 22,488.40
Professional Surveyor	\$ 130.57	40	\$ 5,222.80		
Survey Crew Chief	\$ 104.42	80	\$ 8,353.60		
Survey Field Technician	\$ 62.84	80	\$ 5,027.20		
Survey Office Technician	\$ 97.12	40	\$ 3,884.80		
Aerial Photography - minimum 2,210 sq miles				\$ 65,500.00	\$ 65,136.20
Subcontractor - AGI			\$ 62,500.00		
Project Manager	123.88	8	\$ 991.04		
Geospatial /Imagery Analyst	68.55	12	\$ 822.60		
Photogrammetrist	102.82	8	\$ 822.56		
LIDAR Mission Ground Control				\$ 11,500.00	\$ 11,684.12
LIDAR Acquisition Q2 (Minimum Area - 2,600 Square Miles)				\$ 367,224.00	\$ 364,360.48
LIDAR Acquisition Q2 (Maximum Area - 3,400 Square Miles)					
Project Manager (JRR)	123.88	5	\$ 619.40		
Professional Surveyor	\$ 130.57	16	\$ 2,089.12		
Survey Crew Chief	\$ 104.42	40	\$ 4,176.80		
Survey Field Technician	\$ 62.84	30	\$ 1,885.20		
Survey Office Technician	\$ 97.12	30	\$ 2,913.60		
Subcontractor - AGI			\$ 343,200.00		
Project Manager (JRR)	123.88	40	\$ 4,955.20		
Sr. GIS Programmer	167.22	24	\$ 4,013.28		
GIS Analyst	78.9	80	\$ 6,312.00		
GIS Technician	73.5	80	\$ 5,880.00		
A.1) Analytical Aero Triangulation				\$ 33,466.00	\$ 30,113.30
Sr. GIS Programmer	167.22	100	\$ 16,722.00		
Photogrammetrist	102.82	100	\$ 10,282.00		
Program Manager (RSD)	187.05	10	\$ 1,870.50		
Project Manager (JRR)	123.88	10	\$ 1,238.80		
B.1) Classified Point Cloud - ortho area				\$ 114,970.20	\$ 108,423.30
Project Manager (JRR)	123.88	90	\$ 11,149.20		
Sr. GIS Programmer	167.22	280	\$ 46,821.60		
GIS Analyst	78.9	150	\$ 11,835.00		
GIS Technician	73.5	150	\$ 11,025.00		
GIS Programmer	110.37	250	\$ 27,592.50		
B.2) Bare-Earth DEM - ortho area				\$ 17,245.20	\$ 13,948.00
Project Manager (JRR)	123.88	10	\$ 1,238.80		
GIS Programmer	110.37	100	\$ 11,037.00		
Sr. GIS Programmer	167.22	10	\$ 1,672.20		
A.2) Orthoproduction (2087 sq mi)				\$ 35,792.05	\$ 35,630.80
Sr. GIS Programmer	167.22	20	\$ 3,344.40		
Photogrammetrist	102.82	100	\$ 10,282.00		
Project Manager (JRR)	123.88	30	\$ 3,716.40		
GIS Analyst	78.9	120	\$ 9,468.00		
GIS Technician	73.5	120	\$ 8,820.00		
				\$ 668,197.45	\$ 651,784.60



